

Public Utilities

FORTNIGHTLY



November 22, 1945

SELLING UTILITY COMPANIES TO
THEIR STOCKHOLDERS

By Harold H. Young

« »

The Five Fitzgeralds Were Born to Busses

By James H. Collins

« »

TVA after Twelve Years

By Joseph T. Murphy

« »

Our Regulatory Commissions

By John C. Hammer

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No. 104-B
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VOLUME XXXVI November 22, 1945 NUMBER 11

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Q This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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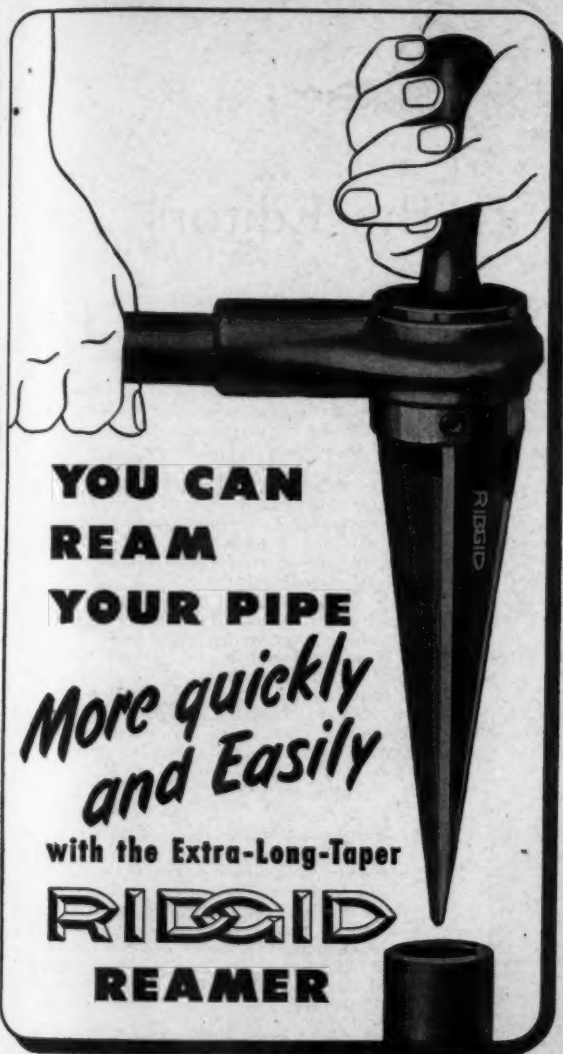
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NOV. 22, 1945



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Pages with the Editors

THE following "gag" announcement, which appears in the current issue of our esteemed contemporary, *Telephony*, seems to be causing some amusement among the good folks in the telephone field:

Announcement

Lt. Commander and Mrs. Warren T. S. USNR, are pleased to announce to all their friends the delivery, at their home, of a little 5-pound stranger, at about 11 A.M. on Tuesday, October 9, 1945. The delivery was made in exceptionally good order and was especially welcome because of the long expectancy and several previous bitter disappointments. In appearance, the little fellow is truly beautiful—coal black all over. It cries now and then but nobody minds. In fact, it is hoped that the newcomer will make a lot more noise after this announcement gets around to friends and acquaintances.

His name will be "Plaza 4859." The parent—the Bell telephone system—is doing very well, indeed, according to the last stockholder report.

THE author or authors of this witty way of



JOSEPH T. MURPHY

The TVA should be tested by its own statutory objectives—not by emotional compliments.

(SEE PAGE 694)

NOV. 22, 1945

announcing to friends the installation and number of a new telephone are perhaps entitled to a little fun in ribbing the telephone companies, because public demand has exceeded the supply to such an extent. We all understand why, of course, and in its own way it is probably a compliment to the essentiality of telephone service that its accessibility can be looked upon, even in jest, as such a treasure.

THIS little item, along with similar items affecting other utility forms, serves to point up the conclusion that public utility industries generally face a tremendous task in getting back not only to prewar standards of service but even exceeding them.

IN Europe or foreign countries elsewhere, which have never known any differently, a delay in service would be accepted with hardly a thought, and certainly not a complaint. But the American public has been educated to a deluxe standard of service. And once so educated they do not forget easily. Nor should the public utility companies want them to forget.

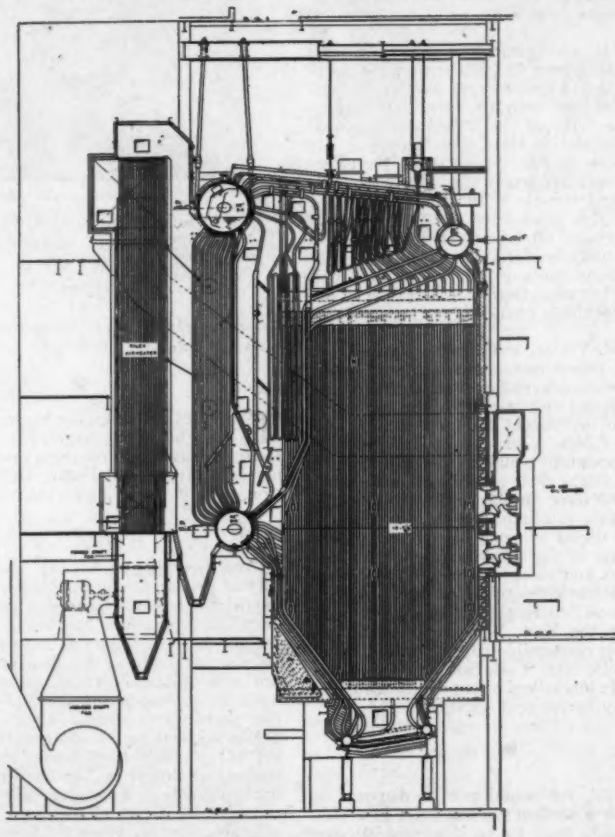
FOR this reason the utility industry as a whole looks forward to the day when the gas, electric, and telephone customers can call for and receive service with a day's notice or a little longer. They look forward to the time when radios, refrigerators, ranges, and numerous other appliances can be ordered during a casual shopping tour and be delivered, installed, and in service the following day or shortly thereafter.

It will take a lot of production, a lot of managerial skill, planning, and plain hard work to step up this phase of conversion. But it is a challenge which must and will be met. Along this line the guest speaker at the recent American Gas Association convention, Ralph W. Gallagher, chairman of the board of Standard Oil Company of New Jersey, certainly ventured a thought-provoking observation when he called upon the gas industry to accentuate the positive and eliminate the negative—in a manner of speaking.

IN other words, the public demand, rather than any attempted industrial interpretation or qualification of that demand, should be the

Power for Pensacola—

Riley Steam Generating Unit installed in Gulf Power Company's new 22,500 KW high pressure plant. Commonwealth & Southern Corp. also installed a duplicate unit at Mississippi Power Co., Hattiesburg, Miss., and have placed orders for another duplicate unit at Mississippi Power Co. and South Carolina Power Co.



Riley Steam Generating Unit
Gulf Power Co., Pensacola, Fla.

230,000 lbs./hr.—975 lbs. Design Pressure—900° F. Steam Temp.

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test of the utility industry's service objective. Instead of explaining why things can't be done, he suggests that even extreme proposals should receive thoughtful consideration, because that is the challenge of leadership for private enterprise. Failure to assert such leadership leads to the public giving its attention to more impractical proposals from less responsible sources—a development concerning which we have had much experience in recent years. We are glad to bring to our readers a digest of the news-worthy events which occurred at the gas association meeting in this issue, beginning page 718.

INDUSTRIAL management also has the obligation of explaining its virtues, problems, and responsibilities to investors, as well as the consumers. This has been recognized for many years in the form of the conventional annual report to the stockholders. The leading article in this issue is an effort to evaluate the effectiveness of such reports in the light of prevailing times and trends. While it is hardly the function of this publication to attempt to advise management on how it should report to its own security holders, we feel certain that the suggestions contained in this article will be received for what they are worth and in the spirit of helpfulness intended.

HAROLD H. YOUNG, author of this article on stockholder report methodology, is well qualified by experience to make observations on this subject. It is not only part of his present position with the investment firm of Eastman, Dillon & Co. of New York city to analyze regularly a representative number of such reports, but he has fairly close association with other analysts who have similar responsibilities, so that his article might be taken, in a business sense, as a digest of such expert viewpoints. He has been in the investment business for twenty years and more recently has given his full time to work on public utility securities. He lectures on "current developments in utilities" before the New York Institute of Finance, and is responsible for the public utility forums of the New York Society of Security Analysts. He has talked about utility securities before many investment groups.

ORDINARILY, we would not be disposed to publish a student's manuscript in a publication which goes to such a sophisticated readership as PUBLIC UTILITIES FORTNIGHTLY. But in these days when the assumption is all too common that student thought is predominantly left wing, such a manuscript attracted our attention, not only because it had a right-wing slant but because it portrayed such ingenuity of research and sincerity of purpose. We refer to the article entitled "TVA after Twelve Years," beginning page 694, by JOSEPH T. MURPHY, who is presently a sophomore at the Massachusetts Institute of Technology. We feel that the intrinsic merit of Mr. MURPHY's theme warrants publication, if for no other purpose than to show that not all students fall

NOV. 22, 1945



HAROLD H. YOUNG

The stockholders' report should be a practical if not happy medium between optimism and pessimism.

(SEE PAGE 679)

automatically for everything they read or see with a government label on it.

THE brief article on our regulatory commissions (beginning page 702) is by JOHN C. HAMMER, associate commissioner of the Tennessee Railroad and Public Utilities Commission, who is active in regulatory affairs.

THE five Fitzgeralds are becoming almost or just as much of a legendary figure in the field of bus transportation and urban transportation generally as the Fisher brothers have become in the automotive industry. The gradual encroachment of bus transportation on the province of the old-fashioned railway system has now become accepted if not commonplace. But there was a time when it took considerable pluck and dash to suggest that large cities get rid of their track-borne transit facilities entirely or almost so. The five Fitzgeralds have made a practice of rushing right in where more conservative financial angels might have considerable doubts. What is more, they seem to have made a sound and profitable business of it. JAMES H. COLLINS, former business magazine editor and now noted free-lance writer on business subjects, gives us an interesting account of these doings of the Fitzgerald frères.

THE next number of this magazine will be out December 6th.

The Editors

This Genie Solves your billing problems

In ancient Arabia lucky Aladdin called on his magic lamp and a Genie solved his problems.

Now a Genie can solve *your* billing and bookkeeping problems!

This modern Genie is *speed*.

It springs from the automatic action and electric energy of the Model 285 billing machine.

Remington Rand's Model 285 is the only completely electrified billing machine to compute and print balances automatically.

It is so automatic an operator needs only to insert forms and record data... the Model 285 does everything else *automatically*!

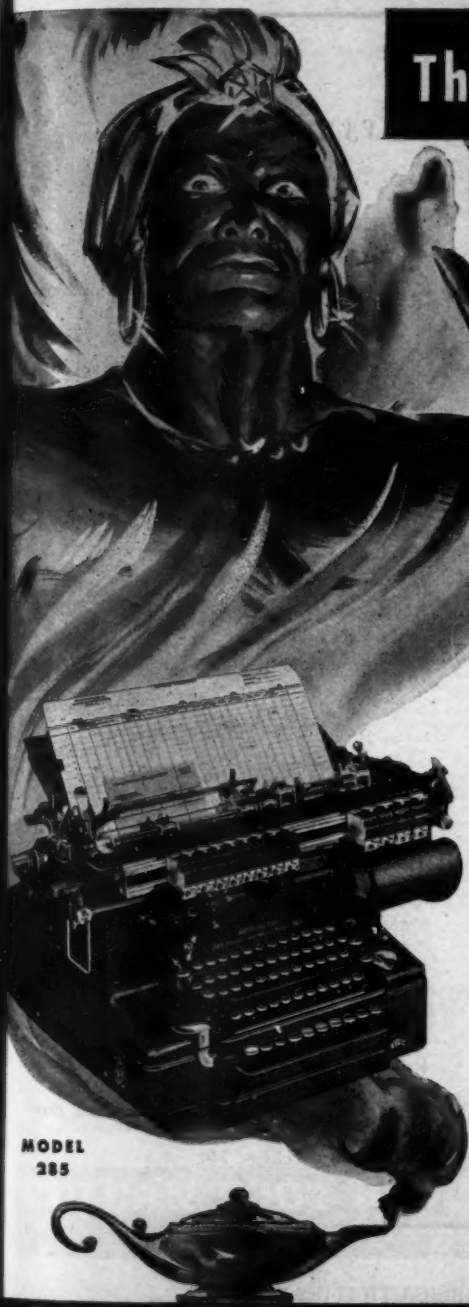
The 285 cuts unit billing costs. How? A Remington Rand specialist in utility billing will show you.

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MODEL
285

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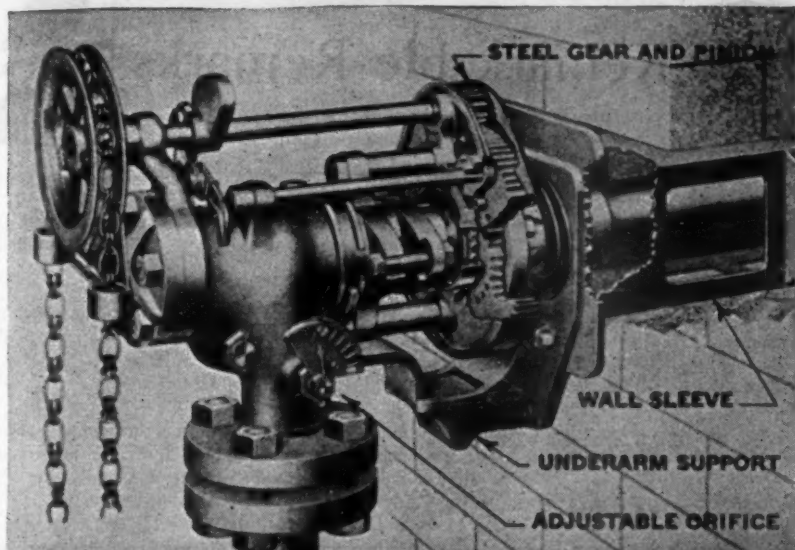
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PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193-256, from 60 PUR(NS)



VULCAN AUTOMATIC VALVED SOOT BLOWERS

THE VULCAN AUTOMATIC VALVED HEAD, MODEL LG-2, was developed some 12 years ago as a result of an exhaustive study of existing soot blower heads and their capability of meeting the new and severe conditions about to be imposed on them by the modern high pressure boiler. A new design, breaking tradition with the old-fashioned low pressure heads, was indicated and the LG-2 head was designed with the following features in mind:

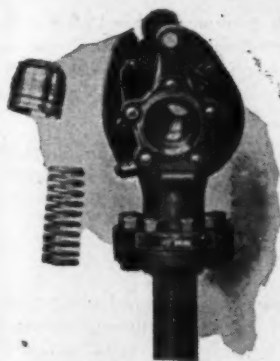
- (1) ▲ head universal in its application
- (2) ▲ head economical in steam (or air) consumption
- (3) ▲ head easy to install
- (4) ▲ head easy and simple to operate
- (5) ▲ head low in maintenance and easy to service

The use of a pilot for operating the valve in the head proved to be the key to the required design and marked a radical departure from the traditional head of low pressure days. A single chain operating through a gear reduction revolves the element and, by means of stops at the end of the blowing arc, moves the pilot to open and close the valve in the head.

This design makes the LG-2 head universal in its application. The pilot operated valve permits the head not only to be used on low pressures but also on pressures up to 1500 pounds. Opening the valve in the head against high pressure, the bug-a-boo of most soot blower heads, is no problem with the Vulcan head as the steam pressure does the job, the operator merely having to move the small pilot valve.

Operators prefer the LG-2 head after using other heads because of its simple and easy operation. The enclosed cut steel gear and alloy pinion, the self lubricated special shaft bearings, and the enclosed ball bearing taking the steam thrust as well as the radial load all make for frictionless operation. Element binding and warping are prevented by the underarm support which balances the weight of the head and piping against an adjustable spring, without any cantilever effect on the element and permits the element to float inside the wall sleeve. A ball and socket joint in the sleeve prevents element strains by allowing relative motion of the setting and element and, at the same time, keeps the setting tight.

The interests of the contractor and boiler erector have not been overlooked in the design of the LG-2 head: It is, perhaps, the easiest head to install. Because of the flanged connection between the element and the head, the assembly of these parts in the field is relatively simple.



Cover Removed and Valve
Parts Exposed

Write for New Catalog

VULCAN SOOT BLOWER CORPORATION

Du Bois, Penna.



Remarkable Remarks

"There never was in the world two opinions alike."

—MONTAIGNE



Excerpt from report by
Brookings Institution.

WENDELL BERGE
Assistant U. S. Attorney General.

ELLIS ARNALL
Governor of Georgia.

STYLES BRIDGES
U. S. Senator from
New Hampshire.

EDITORIAL STATEMENT
Business Week.

JAMES B. CONANT
President, Harvard University.

EDITORIAL STATEMENT
New York Sun.

I. F. STONE
Washington editor, The Nation.

"Without wage stabilization and without rationing the government is not in a position to hold the price line."

"The philosophy of privilege and the practices of restrictions constitute together the greatest menace to the economic development of the postwar world."

"Full employment will be just another ringing phrase to go along with states' rights if the cartel-makers are allowed free rein during the reconversion era."

"A wartime bureaucracy of over 3,000,000 employees spending \$100,000,000,000 in fiscal 1945 cannot suddenly become virtuous by changing to peacetime clothing."

"It is possible for each government-owned plant to be the germ of a government-operated industry, just as Muscle Shoals was the germ of the Tennessee Valley Authority."

"War and peace are, as regards methods, miles apart; but as regards objectives, this war for us, a free people, has been identical with the job that now lies ahead—keeping open the road of freedom."

"This country can support high wages and a high standard of living for all, but it can do so through increased production only and not by means of a capital levy, however cleverly concealed."

"Three things made full employment possible during the war: (1) The government provided a market for all industry could produce; (2) it set up agencies to plan, supervise, and direct the productive process; and (3) a sense of common danger and patriotic purpose made extraordinary controls sufficiently enforceable to be effective. If we can carry these three essentials over into peacetime, we can have full employment under private capitalism in peace as well as war."

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job. He wants to be sure that the manufacturer can be depended on to keep his equipment in top operating condition at all times. He welcomes new ideas on office routines and procedures that will help him make greater savings in time, money and effort.

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REMARKABLE REMARKS—(Continued)

WILLIAM R. BURROWS

*Retired vice president in charge of
labor relations, General Electric
Company.*

"We can have a sound basis for industrial peace only if and when the employers accept the fact that their particular and most important job is to learn how to live with the unions and how to deal with the unions."

ELLIOTT V. BELL

*New York State Superintendent of
Banks.*

"As the system of private enterprise is internationalist in character by its very nature, it cannot flourish in a world of economic warfare. To keep the system we must have real peace. And if we want real peace, we must avoid like the plague all the devices of totalitarianism."

JOSEPH H. BALL

U. S. Senator from Minnesota.

"... if we as individuals are to turn over to the government our obligation to produce something, to do our part of the job of achieving security for ourselves and our families, I fear that inevitably we shall also turn over to the government a large part of our individual liberties and freedom."

DAVID LAWRENCE

Columnist.

"Despite all the professions of virtue about our democratic system and despite the pride the American people take in their willingness to accept the judgment of courts in private lawsuits, no machinery representing the public interest exists to proclaim who is right or what is right in a labor-management dispute."

EDITORIAL STATEMENT

New York Herald Tribune.

"When food is mass produced in chemical factories and taken with a sip of water in tabloid form, the nation will still have to maintain a few family farms for the education of future Presidents of the United States. Certainly, in the case of Jackson and Lincoln it taught two great leaders to keep their feet on the ground."

J. D. BERNAL

*Professor of physics, Birkbeck
College, University of London.*

"The democratic countries have finished their first task of liberating all countries from domination by reactionary forces. The people of these countries and of the rest of the world must see to it that they do not again pass under a domination of fear created by the very weapons that gave them mastery. They will need all their intelligence and political wisdom from now on to conquer themselves."

*Excerpt from report of Edison
Electric Institute Commercial
Planning Committee.*

"Any assumption that postwar lighting is due for a decline fails to recognize the fact that 85 per cent of our old industrial areas are inadequately lighted according to present-day standards. Three billion feet of industrial areas will be inadequately illuminated after the war. If these areas are brought up to standard and lighted 2,000 hours per year, it will mean an increase of 6,000,000,000 kilowatt hours per year. This increase at a unit cost of one cent means an annual increase of \$60,000,000,000 in gross revenue for the electric utility industry."

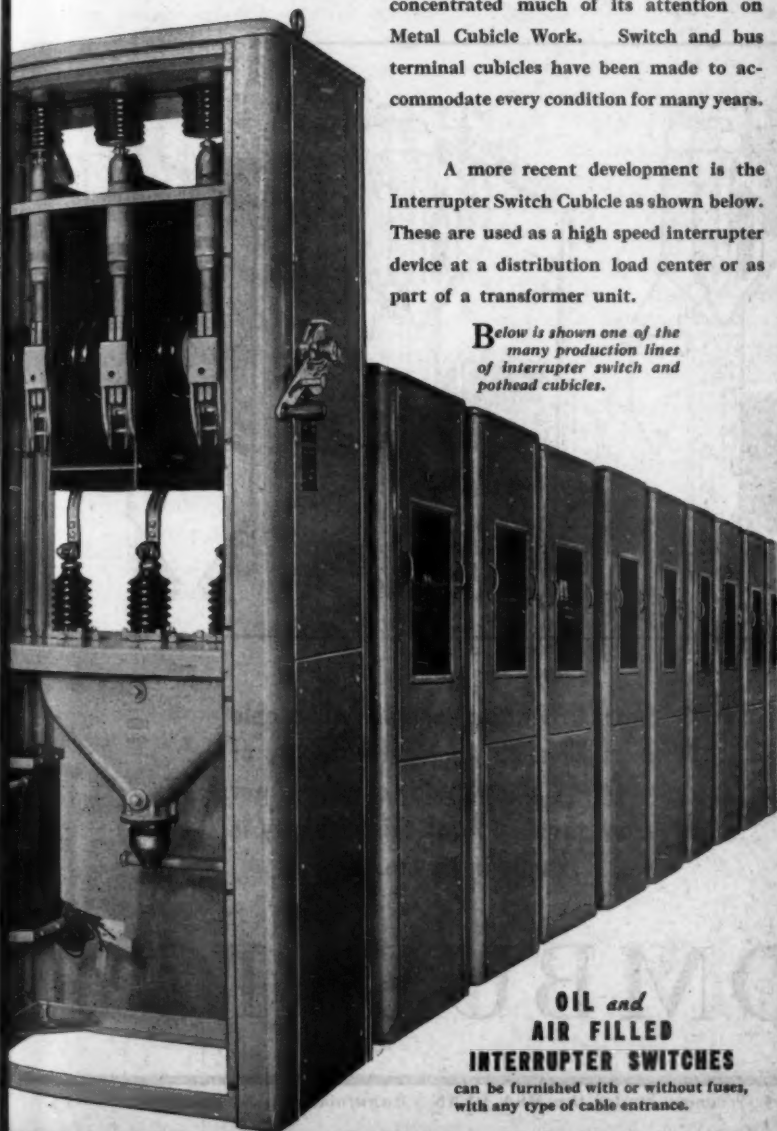
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Along with the many years experience in solving the problems of switchgear manufacturing, R&IE has concentrated much of its attention on Metal Cubicle Work. Switch and bus terminal cubicles have been made to accommodate every condition for many years.

A more recent development is the Interrupter Switch Cubicle as shown below. These are used as a high speed interrupter device at a distribution load center or as part of a transformer unit.

Below is shown one of the many production lines of interrupter switch and pothead cubicles.



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HORN GAP SWITCH

INTERRUPTER SWITCH

CUTOUTS AND
THERMO-ROUTER

SWITCH OPERATING
MECHANISMS

SUBSTATIONS

OPEN OR ENCLOSED
ISOLATED PHASE
HEAVY DUTY BUS

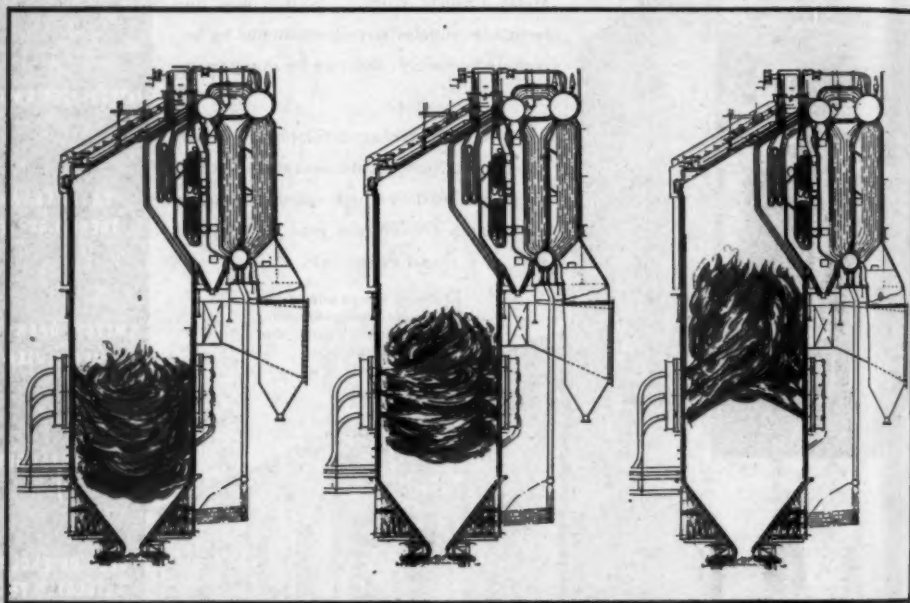
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EQUIPMENT

METAL CUBICLE

TESTING DEVICES

THE ADJUSTABLE



C-E Steam Generating Units with Adjustable
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12,500,000 lb. of steam per
hr. more than 70% of this capacity is
now in service.

COMBUSTION

FURNACE

WITH present-day demands for constant superheat temperature over a range of ratings, the problem of both the designer and operator has been a difficult one. Economic considerations have dictated the use of high capacity boilers capable of taking wide load swings, with corresponding variations of gas temperatures entering the superheaters, while turbine requirements closely limit the permissible variations in superheat temperature.

In a great many plants a further complication has been introduced by the necessity of using coals of low ash fusion temperature which tend to create serious slagging conditions at the top of the furnace, especially at the higher loads. Although the use of by-pass dampers and desuperheaters have been of considerable aid in meeting the problem of superheat control, they do not provide an answer to the problem of maintaining the desired margin between upper furnace gas temperatures and the fusion temperatures of the ash.

Obviously if some means could be found for varying the amount of heat-absorbing surface in the furnace or otherwise controlling furnace heat absorption, it would be possible to control gas temperatures entering the boiler and thus strike at the root of the whole prob-

lem. In other words, what is needed is an "adjustable furnace."

In effect this is just what Combustion Engineering achieves with its "Vertically Adjustable Tangential Burners." The illustrations show how the operator can raise or lower the flame body over a considerable distance to make selective use of more or less furnace heat absorption surface and thereby effect wide range control over the gas temperatures leaving the boiler. Test results in one installation have shown that with the burner nozzles tilted from -24 to $+24$ degrees, the variation obtainable in gas temperatures at the top of the furnace ranges from 215 F at half load to 165 F at full load.

Thus, C-E Vertically Adjustable Tangential Burners provide two important advantages:

- (1) primary, wide range control of superheat temperature
- (2) substantial control over slagging conditions

These advantages are obtainable regardless of coal quality or load variations.

Since Vertically Adjustable Burners enable the operator to control furnace heat absorption just as though he were able to increase or decrease the size of the furnace at will, they provide, in effect, an "adjustable furnace."

A 908



ENGINEERING

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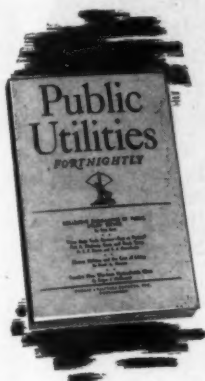
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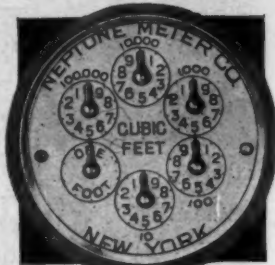
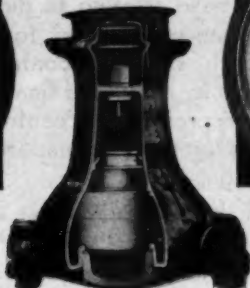
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1179

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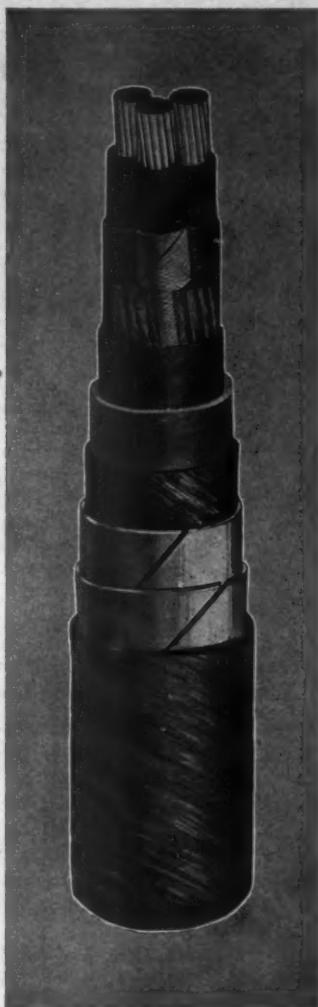
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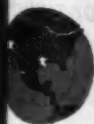


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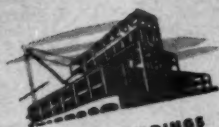


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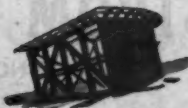
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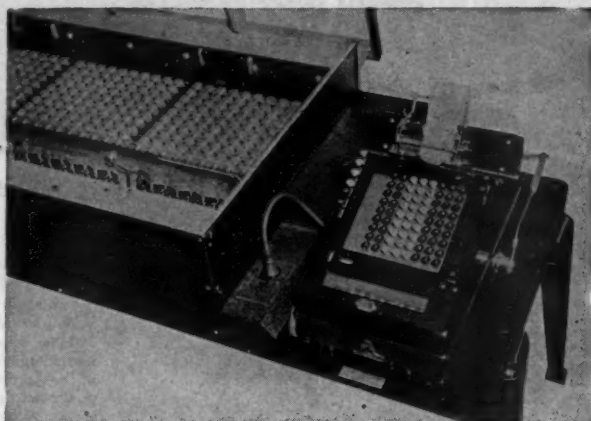
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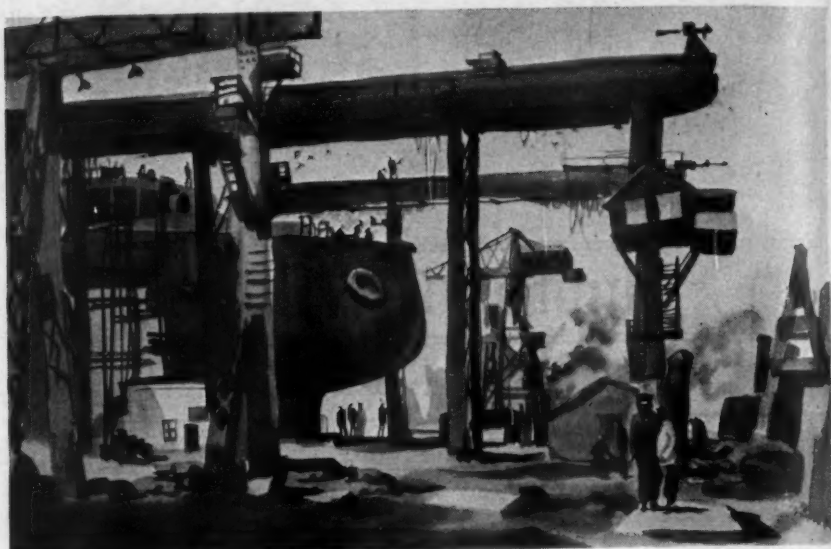
22	T ^a	† Pacific Coast Electrical Association will hold meeting, Fresno, Cal., Dec. 7, 8, 1945.
23	F	† Mid-Southeastern Gas Association starts session, Raleigh, N. C., 1945.
24	S ^a	† Federal Power Commission will resume hearings in natural gas investigation, Dallas, Tex., Dec. 10, 1945.
25	S	† American Society of Mechanical Engineers starts annual meeting, New York, N. Y., 1945.
26	M	† General Electric starts "Victory Lighting Jubilee," New York, N. Y., 1945. 
27	T ^u	† American Water Works Association, Four States Section, will convene, Baltimore, Md., Dec. 13-15, 1945.
28	W	† American Bar Association will hold meeting, Cincinnati, Ohio, Dec. 17-20, 1945.
29	T ^a	† National Metal Exposition will be held, Cleveland, Ohio, Feb. 4-8, 1945.
30	F	† Investors Fairplay League convenes, Chicago, Ill., 1945.



DECEMBER



1	S ^a	† National Association of Corrosion Engineers will hold annual meeting, Kansas City, Mo., May 7-9, 1945.
2	S	† Canadian Gas Association will hold annual convention, Murray Bay, P. Q., Canada, June 18-21, 1945.
3	M	† Society of Automotive Engineers opens national air transport engineering meeting, Chicago, Ill., 1945.
4	T ^u	† National Association of Railroad and Utilities Commissioners starts annual meeting, Miami Beach, Fla., 1945. 
5	W	† Southeastern Electric Exchange, Commercial Section, convenes, Atlanta, Ga., 1945. † National Association of Manufacturers starts meeting, New York, N. Y., 1945.



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Elsie Hafner, N. Y.

Shipbuilding

BY DONG KINGMAN

Public Utilities

FORTNIGHTLY

VOL. XXXVI; No. 11



NOVEMBER 22, 1945

Selling Utility Companies To Their Stockholders

The vehicle for doing that job is, in the opinion of the author, the stockholders' report and he outlines what he believes it should contain.

By HAROLD H. YOUNG

STRANGE as it may seem, public utility companies often overlook a necessary piece of selling—that of “selling themselves” to their own stockholders. The accepted vehicle for doing this job is the stockholders' report. In recent years public utility companies have improved these reports greatly, evidencing a desire of the responsible executives to make them interesting and helpful. The idea of this article sprang from a conviction that still further constructive changes would be made if there were a more general realization as to what items the

users of these reports seek in them. Many times their search is rewarded—often it is in vain.

A question which might be raised at the outset is: For whom should the reports be written? The plea of this writer is to put together the facts and figures which a competent and experienced investment analyst needs to pass judgment on the progress and achievements of the company. Utility executives will not quarrel with the idea that the institutions and the private investors with large holdings are desirous of full reports. They may feel that

PUBLIC UTILITIES FORTNIGHTLY

the small investor is not so much interested or concerned. Such an idea may have been fostered by polls taken by certain public relations agencies, conveying the impression that great detail is not desired. However, if the small investor does not wish particularly for a complete report, it is safe to say that he is looking to some investment banker, broker, or investment counselor to give him advice on his holdings. This adviser certainly is entitled to the facts necessary to form an intelligent opinion. Accordingly, a presentation of the viewpoint of the people who give much of their time to the analysis of public utility securities may not be out of order.

Perhaps some executives may ask: Are stockholders people? The answer is definitely in the affirmative and the man who writes the report might well try to picture himself sitting across the desk from a stockholder who had dropped in to be brought up to date on what has been happening. Let the executive put in the report a factual and sympathetic account of what has taken place in the affairs of the company. Too many reports are cold-blooded, impersonal, dull, and uninteresting. Let there be no doubt that stockholders are vitally interested in whatever affects the position of and prospect for their company.

IN addition to a report on what has taken place, it is entirely in order for the executives to pass along some ideas as to what appears to be ahead which may affect the company either favorably or unfavorably. This can be done without putting the report writer in the position of making either outright commitments or predictions.

NOV. 22, 1945

Stockholders are realistic and they like to face the situation as it is. For this reason there is no occasion to write a Pollyanna report, exuding only confidence and optimism about what is ahead; on the other hand, there is no need to put a black border around every page and bring in all the negative factors which can be conjured up. A good middle course is the ideal one here. Stockholders especially like to get some definite ideas as to what may make business better or worse, expenses higher or lower, operating results more or less satisfactory. The tactful executive can give some pretty good ideas along this line and still not "stick his neck out" by going into the realm of prophecy.

Not only should the reports contain a fairly detailed chronicle of the affairs of the company itself, but the company should also keep its stockholders informed on developments in its territory. This applies with particular force to the smaller companies and companies with a large number of stockholders outside of their respective service areas. People realize pretty generally that the prosperity of a utility company is very directly dependent on the prosperity of the territory which it serves.

IN many respects the American people—especially the generation old enough to be investors—are surprisingly provincial. The ideas of many people in the investing centers of the East are vague, indeed, about the Middle West, Southwest, and Far West, particularly the sections off the beaten paths. There are people in the East who will have no part of anything south of the Mason and Dixon Line or

SELLING UTILITY COMPANIES TO THEIR STOCKHOLDERS

west of the Mississippi river. Let them not fool themselves, however, for their feelings may be reciprocated. The writer chatted with a business friend in Kansas City who asserted he had never gone east of Chicago and never wanted to. Then in a meeting on the Pacific coast a colleague specializing in railroad securities boasted of a new train which would make a fast, direct run from Los Angeles to Boston in the postwar period, only to have somebody in the audience call out: "But who would ever want to go to Boston?" So it goes.

The heads of the smaller companies ought to recognize that neither their companies nor the territories they serve are often in the newspapers and they should be alert to the special need for a good story to be presented. Maps of the territories are always helpful and some companies have done outstanding jobs in making these attractive and instructive, including on the map some representations of the sources of income in the area. Incidentally, it always is good to get across the idea of diversification of business as much as possible. People are suspicious of an area which they feel is tied closely to one industry or one product and any material which helps convince that the company draws on

diversified activities in its territory will be reassuring.

ANOTHER point to be emphasized is that companies ought to make some form of a report to their shareholders at least quarterly. Certainly, there should be an end to the practice, which some companies still follow, of releasing information only once a year. Twelve months is a long period to elapse between accountings of stewardship on the part of the executives of a business. Many progressive companies send earnings reports for publication in the newspapers and statistical services as frequently as every month. Every three months certainly is not too often to report to stockholders, not only with financial statements but with some story as to developments of interest. The mailing of a quarterly dividend check is an occasion which many companies use to get facts and figures before their stockholders and very good work has been done in a number of instances in developing an interesting and enlightening form of quarterly report.

Many companies are mindful of the eye appeal of their annual reports. A good printing job is so obviously essential as hardly to require mentioning. More than this, however, the com-



"Not only should the [stockholders'] reports contain a fairly detailed chronicle of the affairs of the company itself, but the company should also keep its stockholders informed on developments in its territory. This applies with particular force to the smaller companies and companies with a large number of stockholders outside of their respective service areas. People realize pretty generally that the prosperity of a utility company is very directly dependent on the prosperity of the territory which it serves."

PUBLIC UTILITIES FORTNIGHTLY

pany may very well cater to the pride of ownership which a stockholder likes to feel by sending him a report which has been done attractively and in good taste. This should not be construed as saying that anything lavish or unduly expensive is necessary; merely that a little planning and extra pains will do a lot. Photographs of company property and of points of interest peculiar to the company's territory are sure to be well received.

ALL that has been mentioned so far pertains to the background material. Of course, the real meat of the report, so far as an analyst is concerned, is found in the financial statements and statistical information. Everything that the reader of the report might reasonably wish for is prepared by the company in the ordinary course of business and little extra trouble or expense would be involved in passing it along. Certainly, the management should not feel that it had to protect itself by withholding information. A public utility company is engaged in a noncompetitive enterprise so it does not have to fear about figures falling into the hands of somebody who might learn about their costs, volume of business, or other items which are often considered trade secrets among industrial enterprises. Furthermore, most utility companies file complete reports somewhere which are open for public inspection and if facts can be obtained freely by anybody who wants to make a search, why not make them available to the stockholders without the necessity of taking the time and expense to dig them out?

The financial statements should always be on a comparative basis. The

best clue as to the direction in which any business enterprise is headed is obtained by making a comparison of one fiscal period with the one which preceded it. Here again, it is something that the stockholder can do for himself by referring to the statistical manuals but why not give him a break by permitting him to make the comparison with the report right in front of him?

THE necessity for comparative statements refers as much to the balance sheets as to the income accounts. For some reason, many companies publish their income accounts on a comparative basis but show only a single balance sheet in their report. This writer would like to plead most strongly for comparative balance sheets; that is, a balance sheet as of the preceding year end to appear side by side with the current one. A balance sheet gives a picture of the financial position of a company as of a given date. However, without the preceding balance sheet for comparison, the reader of the report does not get an idea of what changes have taken place in the position of the company during the year. Property additions, changes in working capital, debt increase or retirement, changes in reserves—all these and many other things can be worked out as the eye runs down the page; but with only one balance sheet before him, the analyst is very much in the dark as to what the year has brought forth.

Some companies go further and publish tabulated financial material for an extended period—some of them showing as much as ten years. This is received with a great deal of favor by those who have occasion to study the

SELLING UTILITY COMPANIES TO THEIR STOCKHOLDERS



Quarterly Reports to Stockholders

"... companies ought to make some form of a report to their shareholders at least quarterly. Certainly, there should be an end to the practice, which some companies still follow, of releasing information only once a year. Twelve months is a long period to elapse between accountings of stewardship on the part of the executives of a business. Many progressive companies send earnings reports for publication in the newspapers and statistical services as frequently as every month."

affairs of a company, and the convenience of having material for a number of years all presented in one spot is great, indeed.

INTERIM income statements should always include earnings figures on a twelve months' basis as well as for the fraction of a year which the report covers. The seasonal variation of the utility business makes it impossible to get a correct picture from a report for only part of a year, except as such statement is comparative and a trend may be noted. However, if a stockholder wants to get an idea of coverage of fixed charges, number of times preferred dividends earned, or earnings per share of common stock, nothing will serve his purposes but a twelve months' statement. If the company publishes the statement for only a fraction of a year, a hunt must be made to

get the figures for the latest calendar year; then the new figures must be added and the old figures subtracted for the interim period to give a synthetic statement for twelve months and even then the analyst may be doubtful as to the reliability of his figures. Incidentally, interim balance sheets are just as desirable as interim earnings statements. These are helpful in giving latest data as to debt outstanding, financial position, and a dozen other items about which information is wanted more than once a year.

In showing comparative statements, be they financial reports or statistical tables, care should always be taken to arrange the columns so that the most recent year's figures are on the left and those for the earliest years are on the right. This method of arrangement is universally adopted by the statistical manuals, and people who work all the

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time with reports often assume this arrangement is followed and do not bother to look at the dates in the column headings. This can lead to a minor disaster if it develops that a company has not followed conventional procedure but has put the earlier year on the left and the later on the right. More than one company has been known to put out a report in which some of its tabular material runs from right to left and similar material in another part of the report runs from left to right. A little care in the preparation of the report will avoid inconsistencies of this nature.

THE breakdown of items in both the balance sheet and income account should be fine enough to give data necessary for a complete picture. In the income account the departmental segregation of operating revenues is a "must." If this segregation were carried further and shown for net operating income as well, it would be an answer to the analysts' prayers. This particular information is always included in the reports which the companies prepare for the insurance companies, so here again the question arises as to why the material might not be given directly to the stockholder instead of making him chase around the block to locate it.

Of course, maintenance and depreciation should always be shown as separate items and purchased power or purchased gas ought to be segregated from other operating expenses. This latter breakdown is necessary because of the conventional procedure of deducting purchased gas or electricity from operating revenues in relating depreciation and maintenance to that item for determination of the adequacy of

these charges. Incidentally, this is more than just a rule of thumb because many bond indentures now make provision for just this sort of figuring. No doubt should be left as to the nature of income deductions, especially amortization items which might convey any number of different impressions if they are not carefully labeled to avoid confusion.

RELIEF apparently is in sight for some of the tax problems which have been keeping corporation treasurers awake nights. However, so long as present complexities exist, every effort should be made to present a clear picture as to taxes. Property taxes and other taxes levied by state and local authorities should be segregated from Federal taxes. The latter item, in turn, should be so subdivided as to show separately the normal taxes and surtaxes in one item and the excess profits taxes in another. If a company is not subject to excess profits taxes, this fact ought to be clearly stated and not left to the imagination of the person who is reviewing the report. Abnormal tax savings growing out of refundings, accelerated amortization of war facilities, or from whatever source, should be indicated clearly. There is a wide divergence in the methods of handling items of this sort and the present article is not written with the idea of settling any controversial accounting issues.

It would, however, seem as if a conservative presentation would permit analysts to figure out what taxes would have been paid if there had been no abnormal savings. Some companies which are a part of a holding company system and which file a consolidated return with their parent company in-

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dicating the extent of the savings which they enjoy from filing such a return. This information is especially helpful if there is a chance that the company may be cut loose at some future date and will be faced with the necessity of filing returns on a separate company basis.

DEPRECIATION is a live issue and one on which any intelligent stockholder wants to be informed. Enough information should be given so that a stockholder can form an idea as to whether the current charge is adequate. One of the most helpful clues is to know what depreciation is charged for income tax purposes. If the depreciation reported to the Internal Revenue officials is substantially different from the figure in published reports, the stockholders should know the fact and a word of explanation would appear, also, to be in order. Any charges for the amortization of plant acquisition adjustments should be shown separately, as such, and not lumped in as a part of the depreciation charge.

Looking for a moment at the balance sheet, it is highly essential that no doubt be left as to how the plant account is carried. The investing public is becoming conscious of the "original

cost" concept; and if the plant is carried on any other basis, the fact should be made plain. In making this assertion, it is not intended to engage in any argument as to whether or not regulatory authorities are on sound ground in their insistence upon "original cost." The facts of the case are that the prevailing sentiment among the commissions is in favor of accounting on the "original cost" basis and the stockholder wants to know where he stands. Plant acquisition adjustments and similar items should be carefully segregated in the balance sheet and the footnotes ought to make clear what sort of a program the company has for their amortization. If the company is under no compulsion to carry on an amortization program, that fact should be stated rather than leave the matter uncertain. Of course, intangibles should be shown independently. In a combination company, a departmental subdivision of the plant account is very helpful.

THE nature of deferred charges, if they are at all substantial, ought to be made plain. There is a little temptation to make that heading of the balance sheet something in the nature of a catchall and to combine some items which are really unrelated. Similarly,



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on the other side of the balance sheet the item of reserves ought to be broken down so that it is obvious as to the nature of the major items.

Among the liabilities, items of debt should be plainly enough labeled so a schedule of the funded debt can be reconstructed from the balance sheet. Early maturities are, of course, often included among current liabilities—and properly so—but sometimes they lose their identity so the analyst is not quite sure as to whether the listings under current liabilities represent a part of the funded debt or some other type of borrowing.

A statement of the source and application of funds at some point in the report would be welcome although this particular item should be characterized as helpful rather than indispensable. It does show at a glance just how the company has been able to meet its financial requirements for the year and what has become of its items of receipts. Somewhere in the report there should be an analysis of gross and net expenditures for property additions and some statement about the budget for new construction.

SOME companies still have much room for improvement in respect to operating statistics. This is an item for which analysts are really hungry. Detailed information about sales, broken down by departments and shown in terms of both dollar amount and physical volume, is essential. This breakdown should always make plain the distribution as between domestic business, commercial, industrial, and other classifications. The record of number of customers is always looked for. Sources of power or gas should be

shown and many people like to have details of generating capacity. Anything which throws light on rates is helpful for investors realize that if rates are out of line, trouble may be ahead.

Considering for just a moment the reports of holding companies, there is almost universal demand that their reports include a statement of the sources of parent company income (interest and dividends) detailed by subsidiaries, together with a statement of the equity in earnings of subsidiaries. This is public information because it can be obtained from reports to the SEC. Again, why not make it easily and directly available to the stockholders?

A CRITICISM may be raised by a reader of this article to the effect that foregoing suggestions entail additions to material at present carried in the report, making it more expensive and burdensome to prepare. The question may be asked: Are there no corners that can be cut? The answer is often: Yes. Too many companies waste space in their reports by rehashing in words in the text of their report information available at a glance from the figures in the financial statements (if those statements are set up along the lines suggested). There seems to be no need to bring a lot of figures into the text of the report, except as comments may be helpful in discussing the year's operations. It seems unnecessary also to use space in the annual report to show detailed provisions of the outstanding securities (such as redemption prices, sinking-fund provisions, trustees, etc.). This information clutters up a report and financial manuals are the accepted source of such facts.

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It may surprise some executives to learn that many people feel the use of cartoons has been a little bit overdone. The little red man running down hill while the market basket coasts up hill becomes hackneyed after a while. The criticism, here, is not so much as to substance as it is to technique and approach. A little imagination and skill could result in more fresh and interesting presentation in some instances.

LASTLY, a certain amount of weeping on the shoulders of the stockholders could be dispensed with. Perhaps this can best be illustrated by a note written to one utility company by a reader of its report, in which he said:

"I get a little bored by your emphasis on the terrible taxes you have to pay, year after year; *who doesn't?*"

In conclusion, it might be said that this article does not represent the ideas of the writer alone, but was put together only after consultation with colleagues who, like himself, give their working hours to wrestling with facts and figures about public utility companies. If an executive finds his reports are already edited along the lines suggested, he may be sure that more than one person has thumbed through them and has laid them down with a feeling of keen appreciation of the efforts of the man responsible for putting them together.

Research—a Creative Tool for Better Living

"To research we largely owe our superior living standards, which have come to be the trademark of the American way of life. Prior to the war the average American worker labored only one-half as long as the British worker, and one-eighth as long as the Russian worker, to earn enough to pay for the family's food supply. Three-fourths of the homes in this country are wired for electricity. Of those so equipped, 85 per cent had radios, 70 per cent electric irons, and 40 per cent electric refrigerators. The average price of a radio set declined more than 75 per cent between 1929 and 1941, while sales of such sets more than doubled during this period. The widespread use of electricity is due to the steady decline in the rate which, on the average, is now only about three-fifths of what it was three decades ago. As a result of the remarkable increase in the efficiency of the modern electric lamp, which uses less electricity and gives more light, the American public is saved a lighting bill of an estimated \$2,000,000,000 annually. This country has approximately one-half of the telephones in the world. Steady progress is being made in improving and extending services as well as lowering costs. . . . This covers but a small list of items whose costs have been sharply reduced and whose quality has improved over the years. Such performance is a challenge to those who are highly critical of American business enterprise but have only glittering slogans to offer in its place."

—EDITORIAL STATEMENT,

News letter of the First National Bank of Boston.



The Five Fitzgeralds Were Born to Busses

That is why their shop methods have been like blood plasma to the starved Los Angeles transit lines. The bus is a race horse, and must be treated like one—not given the truck-horse maintenance that answers for rail equipment.

By JAMES H. COLLINS

THIS has happened more than once. You may have seen it happen in your own locality, and maybe understood why it turned out that way—maybe not.

From J to Z runs a highway, alongside the J & Z Railroad. Motorbus operators competing for a franchise to share the railroad's passenger traffic would be willing to part with a right arm to get the route.

But the railroad is also a competitor, and lands the franchise.

It puts on motorbuses of the latest type and, after a year or more of red ink, is glad almost to give the line away to a bus operator.

Also, management that has been successful with trolley operation has been known to fail with busses. There seems to be something fundamentally different between gasoline and rails.

It may well be that you have to be born into gasoline, as were the five Fitzgerald brothers, who last year bought the Los Angeles yellow street-car system (Los Angeles Railway, now the Los Angeles Transit Lines), and are modernizing both the rail and bus equipment, and the operating methods.

This yellow car system had starved through a dozen or more lean years, during which its equipment got older and older. Then the war traffic was dumped on top of it, and though some money was made, it could not be spent in rehabilitating the system on account of shortages. So, in what follows it must be understood that the former management is not to be considered an example of how-not-to-do-it.

The Fitzgeralds say that they are just farm boys trying to run a few

THE FIVE FITZGERALDS WERE BORN TO BUSES

busses. Starting with a single bus, in the Middle West, they now operate both busses and rails in thirty-four cities—at the last tabulation, around 4,000 busses and maybe 2,500 streetcars.

ED and John Fitzgerald were born near Strawn, Illinois, and Roy, Ralph, and Kent near Staplehurst, Nebraska. Leaving the farm for railroad construction and later going into the northern Minnesota mining country, Roy got a job in a garage at Eveleth, and presently bought a small motorbus, carrying miners to work between that town and Leonidas.

It was only a 2-mile haul, but the hours were long, and Roy had to do the mechanical work on the vehicle after his day's runs. So Ralph and Ed came in, with savings to buy another bus. Each drove a route and worked a shift, and, in between, attended to repairs, lubrication, and maintenance of their 2-bus "fleet." Sometimes repairs had to be made on the roads, in Minnesota weather, but each of the brothers could make them.

Presently Roy looked around for more passengers, while Ralph specialized in maintenance, and Ed kept the books. In 1921, they extended their line to Virginia, 5 miles away, and Kent and John joined the business, learning to drive and repair. And so their operations grew into a national system extending from Tampa to St. Louis and El Paso, and now to the Pacific coast.

The Fitzgeralds learned how to operate busses, and at a period when streetcars were beginning to lose money. The day of universal automobile ownership had arrived. During

the 1910's, the "poor man's car" had been a dream. Starting with the 1920's, it became a reality.

Battered and noisy, perhaps, but getting the poor man around so well that, where trolley management had counted on one and a half regular rail passengers per house, with a half-passenger irregular, the ratio quickly ran down to one sporadic passenger in every five houses.

WHILE rail operators were discouraged by the loss of traffic, the Fitzgeralds bought lines, put on busses, extended routes, to give the public transportation with gasoline flexibility. With busses, they had no rails to keep up. When the passengers moved out into the country to live, the Fitzgeralds could follow them. Far from being discouraged by change, they followed the trends, to see how the new could be imposed on the old. And their success has largely been due to this rerouting in search of the elusive passenger and to their knowledge of maintenance, gained on the wintry Minnesota highways.

In Los Angeles they found a tough situation. There wasn't enough equipment to haul the war traffic, and it was mostly old type—both rail and gasoline. New equipment was still somewhere ahead in the future. Not enough men—or women either—could be hired to keep all the equipment running.

However, the performance of the gasoline equipment showed room for improvement, under Fitzgerald standards.

Trolley cars have a simplicity of construction and operation, compared with gasoline vehicles, that leads op-

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erators to figure maintenance in tens of thousands of miles. The juice comes in from the trolley, goes through the motor, turns the wheels, and that goes on for maybe 50,000 miles without trouble. Maintenance was even simpler with steam. Rail men tend to be leisurely in shop work, and that system is satisfactory for rail equipment.

But motorbuses need maintenance by the single thousand miles, as the Fitzgeralds do it, and even before VE-Day they had assigned one of their experienced maintenance men to install their methods at the company's garage at Sixteenth street near San Pedro.

Most of this garage is outdoors, only the shop work being done under roofs. It was established when gasoline equipment began to supplement rail vehicles, and, what with war, and inadequate revenues, and other things, it had become congested. Once, the bus that drove in for repairs could be backed out after the work was done, because there was room. But last year busses blocked each other, and nobody had found time to change the layout.

THE new maintenance manager streamlined the place. Shop walls were knocked out, so that the bus that had been driven in on one side and gone ahead getting its inspection and repairs could be driven away in the

same direction, onto another street, or into the storage yard which was provided.

Storage in this case means, usually, from just before lunch, when a repair job is finished, until afternoon, when the evening traffic rush starts. Quite a large area is set aside where shop traffic does not interfere. But by 4 P.M. this storage area will be bare.

The Fitzgerald system of motorbus maintenance is to figure what each coach should do in mileage, and key inspection and maintenance to that mileage, reducing lost time in the shop to the bare minimum.

In different cities, according to the nature of the traffic, a bus can be operated from 70,000 to 100,000 miles a year. That volume of traffic is available, if the bus is available. So, maintenance means keeping it available, reducing time in the shop to the minimum.

Under war conditions, the 300 to 325 motorbuses of the Los Angeles Transit Lines averaged only around 40,000 miles during 1944. There was almost unlimited traffic available, but many coaches were out of service for lack of operators or under repairs.

THIS year, there has been a great improvement, due partly to some deliveries on an order for 400 new



Q "TROLLEY cars have a simplicity of construction and operation, compared with gasoline vehicles, that leads operators to figure maintenance in tens of thousands of miles. The juice comes in from the trolley, goes through the motor, turns the wheels, and that goes on for maybe 50,000 miles without trouble. Maintenance was even simpler with steam. Rail men tend to be leisurely in shop work, and that system is satisfactory for rail equipment."

THE FIVE FITZGERALDS WERE BORN TO BUSES

busses, but more to improved shop methods. The new vehicles were so badly needed when they began coming in before VJ-Day that they were run out of railroad cars directly into service, picking up waiting passengers. Their first paint coat was postponed until they went to the shop for an extensive overhaul. In their drab primer paint, they had public relations value, because the public, which had often been passed by full yellow busses, saw that the company was actually getting new equipment and really had plans for a modernized bus service.

At the present time, shortly after Japanese surrender, busses are running 200 to 225 miles daily.

Which means, under the shop system, that they come in about every week to ten days for a minor inspection, and every two to three weeks for a major inspection.

Shop visits are timed, not in days, but in miles. A girl dispatcher enters the mileage for each bus every day, and at 2,000 miles and 4,000 miles orders it in for minor and major inspections and repairs.

The yard and shop can handle about 350 busses, which means that under war conditions the abnormal number of one in 10 could be in the shop. With new vehicles and normal conditions, about one in 20 should be in the shop.

Bus operation costs this company from 25 cents to 30 cents a mile. Passenger revenues last year ran around \$2 per mile.

So, roughly—these figures are extremely variable according to traffic—10 per cent of the rolling stock in the shop at all times means 10 per cent lost revenue, a half a million dollars on the company's 1944 bus operations. Re-

duce this to 5 per cent, and you earn money faster than it comes in fares.

APPLY the rail operator's viewpoint of the long vacation to motorbus equipment, and the money dribbles away without anybody realizing where it goes.

The shop crew is selected for coach-minded mechanics, and works on a 24-hour, 7-day schedule that serves motorbus needs.

At present, there are 115 mechanics on repairs, and 50 more in the yards. Their working hours are geared to coach traffic.

Under war conditions, the morning rush started as early as 4:30 A.M. It lasted until about 9 A.M., when everybody had reached his work or office. At 11 A.M. the shopping rush began, lasting until about 2, and around 4 the rush home of workers set in, lasting until about 7 P.M.

Shop work is keyed to making inspections and repairs between these weekday peaks, as far as possible. So, the heavy work force is on during the daytime, and the smaller night force works on inspections and shoots trouble. It has been found by Fitzgerald operators that shopmen do not work as well at night as in the daytime.

The dispatch sheets for every coach show its mileage, when it is ordered in for inspection, how long it stays out of service, and what was done to it. The minor inspection covers more than 50 separate mechanical items on a report sheet each of which has to be checked by a mechanic and initialed. The major inspection covers nearly 150 items. Work found necessary to do is specified on a shop order sheet, and each item has to be checked and initialed.



Traffic during 1944

“UNDER war conditions, the 300 to 325 motorbuses of the Los Angeles Transit Lines averaged only around 40,000 miles during 1944. There was almost unlimited traffic available, but many coaches were out of service for lack of operators or under repairs. This year, there has been a great improvement, due partly to some deliveries on an order for 400 new busses, but more to improved shop methods.”

THUS, if a coach begins losing too much time, or coming back too often, a study of its records will generally show why. Some item of inspection or repairs was overlooked, or an individual mechanic is found incompetent, perhaps on a particular kind of work, or some part of the coach needs replacement. With the occasional long vacation that suffices in rail equipment, records need not be so detailed as those for the short, frequent vacations needed by automotive equipment. The trolley car is a truck horse, but the motor coach a race horse.

Inspections cover mechanical points affecting operation, such as carburetors, ignition, gears, brakes, steering equipment, lights, lubrication, doors.

Also, various points involving the easiest working conditions for the driver, such as gear shifts, steering wheel play, instruments, signals.

And, finally, points affecting passenger comfort and safety, like torn seat coverings, broken or loose seats, floor coverings, windows, steps, treads, interior lights.

Every 2,000 miles gasoline lines are checked for leaks, the battery inspected and properly filled with water, wheel lugs and axle flange nuts tightened, tires brought up to proper pressure, oil cleaner checked, ignition points and timing checked, motor checked for missing and revolutions per minute on a gauge that gives positive data, brake lining wear checked—each item on the inspection sheets is something that has been found making trouble when neglected.

EVERY 4,000 miles, the inspection routing includes items like checking springs for broken leaves and looseness, bearings and drive for wear

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and play, muffler and exhaust for leaks, transmission housing for leaks, spark plugs, gasoline screens, motor valves—a list of things that were never heard of in the balmy days of rail!

After each item, the mechanic writes his initials, and a check mark indicating OK, or an X meaning adjusted, or an O indicating that repairs are needed. When the bus goes into the shop with its inspection sheet, the mechanics there know exactly what is to be done, and do it by a routine that is further insurance against anything being overlooked.

From their earliest days, when it was necessary to hire help, as they bought one more 12-passenger bus than the brothers could handle, the Fitzgeralds have built their operating teams out of employees hired for driving or shop work. The Fitzgeralds know busses, and every manager knows busses, and all know each other. In a jam, the fellow in overalls out on the road may be the Old Man himself.

Knowing motor equipment, the Fitzgeralds were not long in placing orders for new coaches, to be delivered as fast as possible under war shortages. Los Angeles has been a critical labor area and a good many of the labor difficulties have been due to shortage of transportation and utility labor.

Total orders for 400 new coaches were placed last year, and the first delivery of 37 was made in February. Others are now coming along regularly, and the whole order will be filled by next year.

No new rail equipment has been ordered, because the company had received a considerable number of PCC trolley cars during the war, and the

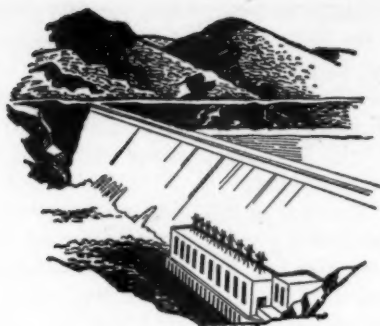
Los Angeles transit situation is today in a state of uncertainty.

A GREAT speedway system has been planned, of elevated motor highways, coming in from the suburbs for 20 miles around and more, and joining a downtown loop which will also be an elevated motor highway. Thus, routes, franchises, the kind of equipment that will be needed, are all in a state of flux, with probabilities that motor coaches will predominate. On such speedways no traffic lines cross, high speeds are maintained, and motor-buses make only station stops, dropping down to street level by ramps. Rail equipment is obsolete on the speedways, and coach lines on them will probably supplant present rail lines.

Assigned to modernize the Los Angeles yellow car system is W. Ralph Fitzgerald, outstanding as the operating man of the family. "Ralph" was second to get into transportation, joining his brother Roy in their first bus venture, and specializing as repairman as their fleet grew, and also introducing new operating ideas. In Los Angeles, mechanical improvements like windshield wipers, and morale builders like snappier uniforms and badges, quickly appeared after "Ralph" had taken charge.

The other day, an important issue came up at a meeting of employees, with "Ralph" absent, and it was the general opinion that such a matter called for a good deal of "talking over."

"Talk it over?" jeered one conferee. "No! Ralph doesn't want conversation. He wants action. If it can't be done—don't talk about it!"



TVA after Twelve Years

A student examines the published records and concludes that not all of the rosy claims for the big Federal enterprise square with the facts.

By JOSEPH T. MURPHY

LAST May the Tennessee Valley Authority celebrated its twelfth statutory anniversary. Although its operations did not really get under way for some time after its birthday because of the preliminary necessities of organization and construction, TVA has been around long enough to warrant a disinterested appraisal. So much has been written about TVA, from so many different angles, and by such high authority and competent experts, that it would seem almost presumptuous for a comparative newcomer in this field to attempt to estimate the merits and demerits of such a vast undertaking within the brief confines of a single article.

And yet, perhaps, for purposes of simple and forthright judgment on whether TVA is fulfilling its mission with due regard for cost and effectiveness, the student's approach may have a virtue of its own. The lush literature

of TVA is redolent of special pleading, sentimentality, and preconceived ideas about what TVA was supposed to do and how well it is doing it. It is commonplace to hear TVA spoken of as a "fine thing." It would be idle, of course, to deny that any investment of nearly three quarters of a billion dollars—assuming even a nominal degree of honest and efficient administration—could have been anything but "fine" for somebody. Indeed, it is difficult to conceive of that much money being spent for any conceivable purpose, without benefits accruing to the different groups and classes. It would be a "fine thing" for *them*.

But, seriously, the only common-sense gauge of TVA's accomplishments must be made on the basis of what Congress intended TVA to do, whether these purposes were accomplished well, poorly, or indifferently—and (assuming they were well accom-

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plished) whether they could otherwise have been achieved at less expense or in a more efficient manner, or both.

TAKING such a students' approach to TVA on its twelfth statutory birthday, therefore, we find the following fundamental basis for TVA's existence in the organic act which set up the authority as created by act of Congress May 18, 1933 (48 Stat 58, 16 USCA 831): According to the "U. S. Government Manual," the TVA Act directed the corporation to take over custody of Wilson dam and appurtenant plants at Muscle Shoals and operate them in the interest of national defense, and for the development of new types of fertilizers for use in agricultural programs. These purposes governed the original construction of the Muscle Shoals properties pursuant to § 124 of the National Defense Act of 1916 (39 Stat 166, 10 and 32 USCA).

The statute further provides for the development of the Tennessee river and its tributaries in the interest of navigation, the control of floods, and the generation and disposition of hydroelectric power. Executive Order 6161, of June 8, 1933, confers upon the corporation the authority to conduct investigations upon which additional legislation may be predicated in order to aid further the proper conservation, development, and use of the resources of the region. In the conduct of its operations and investigations, the corporation is authorized to cooperate with other national, state, and local agencies and institutions so that the fullest measure of effectiveness can be achieved.

Effort to improve the Tennessee

river system for navigation, dating from the administration of President Monroe in 1824, culminated in the statute creating the Tennessee Valley Authority, which imposes upon that agency the duty of bringing about an adequate and complete development of the river system through the construction of a series of dams upon the main stream and its principal tributaries. The relationship of the serious flood problem on the Tennessee river to that of the Mississippi was such that Congress directed the corporation to provide its projects with flood-control storage to alleviate these conditions. Closely related is a program of water control and conservation in the watershed of the Tennessee valley, of which fertilizer research carried on at the plants at Muscle Shoals is a vital factor.

As a Federal corporation, the powers of the Tennessee Valley Authority are vested in its board of three directors appointed by the President with the approval of the Senate. The corporation may sue or be sued in its corporate name, make contracts, adopt by-laws, purchase or lease real and personal property, and exercise the right of eminent domain in the furtherance of its constitutional objectives.

The corporation is financed by congressional appropriation. Additional funds may be obtained from the sale of power or fertilizers in the amount and under the conditions provided by the statute. Some funds have in the past been obtained by the sale of bonds, but there is no authority to issue additional bonds, except under certain narrowly restricted conditions. The Comptroller General of the United States is em-

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powered to make a postaudit of all accounts of the corporation.

So much for TVA's statutory and administrative background. What is TVA from the standpoint of its physical existence and practical operation?

It is a huge system, spread out over seven states, comprising twenty-nine dams on the main river and its tributaries. It has numerous electric power-generating stations which last year combined to produce 2,000,000,000 kilowatts of electricity. Barges also ply its waters and last year produced 250,000,000 ton-miles of traffic.¹ Such a huge undertaking has never before been attempted and an analysis of it should tell us whether it has justified itself and whether more like it should be built.

¹ *Reader's Digest* for October, 1944, page 38.

IN analyzing this, we must keep in mind several important points such as its cost compared with the cost of private enterprise doing the same job; the interest and tax-free status it enjoys; how the money is raised to pay for these charges that private industry would have to pay; the fact that fixed charges play a huge part in the cost of producing electricity as will later be shown; and the purely socialistic idea of the whole undertaking.

The three main divisions of the work of this authority can be stated as aiding flood control and navigation, conservation of the soil, and generation of electrical power, with the third being by far the dominant one.

The government has the right to improve the waterways of the country in the interests of navigation but when it

Table I—Cost of Projects

PRIVATE COMPANIES

<i>Licensee</i>	<i>Year Completed</i>	<i>Cost Claimed</i>	<i>Capacity in Horsepower</i>	<i>Present or Initial Cost Per Hp.</i>
Alabama Power Co.	1928	\$10,646,056.76	72,000	\$148
Louisville Gas & E. Co.	1927	7,829,838.72	108,000	72
Columbus E. & P. Co.	1928	7,688,544.12	66,000	116
Safe Harbor W. P. Corp.	1931	24,995,111.74	255,000	98
Susquehanna River P. Co. ...	1928	65,156,084.98	378,000	146
Alabama Power Co.	1926	17,868,816.84	135,000	132
		\$134,184,454.00	1,014,000	\$123

\$123 per hp. = \$165 per kw.

TVA

Plant in Service June 30, 1943	\$350,447,908
Construction in Progress	195,985,847
Estimated Cost to Complete	152,386,245

Capacity of Generating Plants Total

Authorized Hydro 2,354,560 kw.

TVA cost per kw. $\frac{\$698,820,000}{2,354,560} = \297 per kw.

$\$297 - \$165 = \frac{132}{165} = 80\%$ more

TVA AFTER TWELVE YEARS

starts competing with private industry it is stepping out of its element and there are bound to be complications.

This is the chief bone of contention and the one which has attracted the most attention. But we must also take into account *all* the various activities in which the TVA is engaged, so as to get a true perspective of the relationship between cost and price in the case of the widely publicized power rates.

As originally proposed in Congress the plan of the TVA was that it would be self-liquidating and in the long run would not cost the taxpayers a cent. Indeed, Dr. A. E. Morgan, the former chairman of the project, testified before a House committee² that after five years of getting on its feet the project would be self-liquidated in twenty-five years. Furthermore, when the TVA announced its power rates in 1933 they were based on an interest rate of $3\frac{1}{2}$ per cent (on capital investment). Now we find the present director³ saying the capital can be retired in sixty years without interest. It seems the idea of self-liquidation is becoming more and more a glimmering hope, for up until the present time no funds have been paid into the Treasury for the purpose of reducing capital debt.

HERE is what our student is likely to find out in his analysis of the major undertaking of the TVA:

1. The engineering of the TVA is excellent and its management is sound in the operation of facilities. It had the engineering genius of the coun-

try to call on and it made good use of it. However, to begin with, when compared with the plants of similar capacity built by private companies we find the TVA costs approximately 80 per cent⁴ more.

2. The fertilizer business of the TVA by its own account was \$3,343,599 in the red for the fiscal year ending June 30, 1943. The chief use of this business seems to be the distributing of small lots of fertilizer all over the country as a good-will gainer much as the free seed distributions by earlier Congresses.

3. We now come to one of the three main items of expenditure; namely, flood control. Here we must be careful to judge the exact benefits received because a large part of the original (23 per cent)⁵ cost was allocated to this purpose. Admittedly the TVA is a model flood-control project. The exact results can be calculated only with the passage of time. Already there are many who gravely question its worth, saying the state of Tennessee has lost more on inundation of land than it has gained by way of flood protection.

The subject becomes more and more one for debate when we attempt to reckon the cost. Best estimates allocate between \$80,000,000 and \$90,000,000 of the \$700,000,000 to flood control. The TVA basis of power rates seems to indicate a $3\frac{1}{2}$ per cent interest rate charge as standard, as indicated before, and when coupled with 1 per cent for amortization (paying back to principal) we find that the fixed cost for flood control per year would be \$4,-

² House Appropriations subcommittee 1934 HR 9830, 73d Congress, 2d Session, page 169.

³ David E. Lilienthal in a speech before Washington Society of Engineers, May, 1944.

⁴ See Table I, page 696.

⁵ Annual Report TVA 1943, page 41.

PUBLIC UTILITIES FORTNIGHTLY

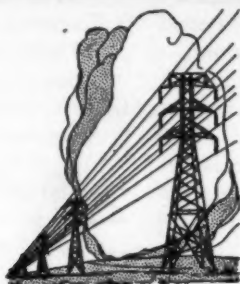


Table II—Expenses and Revenues Required

TVA	
Total Operating Expenses	\$17,874,000
Less Depreciation	5,738,000
Less Taxes	1,960,000
Total Operating Expenses, Less Taxes and Depreciation	\$10,176,000
Net Expense Navigation	\$ 1,249,000
Net Expense Flood Control	786,000
Net Expense Fertilizer	3,344,000
Net Expense Related Property	798,000
Net Loss Other Programs	\$ 6,177,000
<i>Expenses</i>	
Total Operating Expenses (Less Taxes and Depreciation) ..	\$10,176,000
Depreciation	5,738,000
Net Loss Other Programs	6,177,000
Interest 3½% \$435,000,000	15,225,000
Amortization of 1% \$435,000,000	4,350,000
Total Expense Exclusive of Taxes	\$41,666,000
Federal Taxes 1/6 Gross Revenue	
State and Local Taxes 10% (1/10) Gross Revenue	
Federal, State, and Local Taxes	\$15,150,000
Gross Revenue Required to Meet Expenses	\$56,816,000

000,000. When we add another \$1,-000,000, which is the cost of operation, we have a grand total of \$5,000,-000 per year for flood control. Balancing this is the average yearly flood damage (over a period of years) suffered by the valley inhabitants. We find that the Army Engineers⁶ estimate for

annual flood damage amounts to \$1,-784,000.

We also find that 75 per cent of the flood damage occurs at Chattanooga and above, with most occurring in the Emory river basin where the TVA makes no provision in its plans for flood control.⁷

⁶ House Documents, 71st Congress, 2d Session, page 734.

⁷ Hearings before a joint committee to investigate TVA, page 3952.

TVA AFTER TWELVE YEARS

Added to this is the estimated annual crop loss through inundation of \$4,200,000. Thus we have a total expenditure each year of \$9,000,000 to effect a doubtful saving of \$1,784,000. By these facts and figures it would seem that something is definitely wrong.

A logical conclusion would be that the amount assigned to flood control (23 per cent of \$700,000,000) is grossly overestimated, perhaps on purpose, as we shall see later.

4. The next big item is that of navigation. It is allocated approximately \$150,000,000 of the \$700,000,000 total cost. The Army proposed a navigation project for this river that would cost only \$75,000,000,^a which is quite a difference. However, assuming the government figure of \$150,000,000 to be true and charging even an interest rate of but 3 per cent plus 1 per cent for amortization, we find that \$5,000,000 would be the fixed charges. Conservative operating charges would give a figure of \$1,600,000, which would then give a total of \$7,500,000 annually spent on navigation.

If this were a private undertaking a toll would be charged in order to pay expenses. In this case in order to pay even current expenses and to break even, to say nothing of profit, a toll of 3 cents^b would have to be charged on every ton of freight moved a mile over these waterways, exclusive of owners. When operating costs are compared with the railroad rate of less than a cent a ton-mile for everything, and keeping

in mind the fact that water transportation is the cheapest form of transportation available, we can quickly see that a figure of \$150,000,000 is evidently very artificial, as was the figure for flood control.

The reason for this can be found when we take up the question of the power rates charged by the TVA when compared with private rates.

5. While we have accounted for \$250,000,000 of the \$700,000,000 spent on the TVA by assuming the allotments of the government to be correct, there still remains a sum of \$450,000,000 to be accounted for. This amount is allotted to power facilities for the purpose of producing low-cost electrical power. This expenditure and the power rates of the authority are the main topics of contention between private business and the government. The power rates of the TVA are much lower than the rates of public utilities and serve as a comparison which is to the disadvantage of the utilities. Apart from the fact that the competition by the government in private business raises a question of political morality, there are many interesting comparisons as to the cost and whether the rate is indicative of costs, etc., that seem to pile up to a considerable extent against the TVA.

The idea of a government competing in the power business is not new, for the British government is in the power business. Yet there are no disputes or discussions. Why? The answer is that the government pays interest on its loans for capital and also all taxes as does any privately owned public utility. It finds that it cannot produce electricity any cheaper than the

^a House Document 328, 71st Congress, 2d Session, pages 6, 7.

^b $\frac{\$7,500,000}{250,000,000} - \text{Cost} = \$0.03/\text{ton-mile}$

PUBLIC UTILITIES FORTNIGHTLY

private companies and it also finds that business does not mind a fair competition.

THE TVA does not pay any interest on loans from the government, does not pay any Federal taxes, pays only one-half on local taxes, and finds that business does object to an unfair competitor.

Last year the TVA sold 8,077,508,000 kilowatt hours of electricity for a total of \$53,449,725, making an average price of .66 cents per kilowatt hour, and the average price of the distributing agencies (municipalities, coöperatives, etc.) was 1.22 cents each kilowatt hour. In the same period the privately owned public utilities charged 1.66 cents per kilowatt hour. Thus the TVA undersold its competitors. Why and how, you may ask. Table I will give the exact initial cost of the TVA power per kilowatt hour based on cost

of plant, etc. This same table will do the same for utility companies and make a comparison.¹⁰

The subsidy enjoyed by the TVA in the form of interest less capital and immunity from taxes is enormous when we take into account the fact that in a hydroelectric plant the operating expenses account for only 10 per cent of the expenses while fixed charges (interest, taxes, amortization, etc.) account for 90 per cent. If the TVA paid what private industry does in the way of taxes and interest, the rates of the TVA would have to be increased 2½ times. In Table III (below) there is a study of the change that rates would undergo if the TVA were forced to compete with private industry on the same basis.

PPRIVATE industry in any age or country has never thought it necessary

¹⁰ See Table I, page 696.



Table III—Gross Revenue Requirement

	<i>Assumed for Project \$700,000,000</i>
Total Operating Expenses (Less Taxes and Depreciation) ..	\$ 12,500,000
Depreciation	6,000,000
Net Loss Other Programs	6,500,000
Total Expense Exclusive of Taxes, Interest, and Amortization	\$ 25,000,000
<i>\$700,000,000 Project</i>	
Interest 3½% \$700,000,000	\$ 24,500,000
Amortization 1% \$700,000,000	7,000,000
Total Expense Exclusive of Taxes	\$ 56,500,000
<i>Taxes \$700,000,000 Project</i>	
State and Local @ 10%	\$ 7,705,000
Federal @ 16½%	12,840,000
	\$20,545,000 (now pay) \$ 1,960,000
	Loss \$ 18,600,000

Gross Revenue Required to Meet Expenses

\$700,000,000 Project \$56,500,000 + \$20,545,000 = \$ 77,045,000

TVA AFTER TWELVE YEARS

to get excited when the government decides to compete in business on anything like even terms because it knows that over the long range private industry can and will demonstrate its greater efficiency.

By taking up separately each of the various aspects of the TVA we can reach the following conclusion: (1) As a power scheme it is a high-cost development which could not stand on its own feet; (2) as a flood-control scheme it has little if any value, since it destroys more than it saves; and (3) as a navigation project, the one function in which the government has an undisputable right to engage, it cannot justify its cost.

We have taken the figures in Table II¹¹ based on the \$700,000,000 project simply because we have shown that the other programs are financially unable to show a profit, thus shouldering their costs onto the main part of the program, the power section. We thus see that if the TVA were forced to pay what it should it would be forced to raise its rates 140 to 160 per cent, which is the 2½ times we have previously referred to.

Its rate would then be approximately the same as the rates of the power companies while its original cost of plant would be 80 per cent higher.

¹¹ See Table II, page 698.



"IN their hearts the American people know what kind of peace they want. They may differ upon details but they are agreed upon the things that are really important. What is needed is effective leadership, honestly and vigorously to carry into realization the aspirations upon which our people are united.

"We want a peace that will be lasting. That means a peace that will be just. That means not only justice for the few and powerful but justice also for the many and less powerful.

"We want a peace that is based upon realities and not upon the insecure foundation of mere words or promises. That means a peace which, being mindful of the interest of other nations, does not neglect or sacrifice the interests of our own nation."

**—EARL WARREN,
Governor of California.**



Our Regulatory Commissions

They must not yield to outside influence from any source—Qualification for membership.

By JOHN C. HAMMER

MEMBER, TENNESSEE RAILROAD AND PUBLIC UTILITIES COMMISSION

THE late Joseph B. Eastman in his 12-point Primer on the Conduct of Administrative Agencies said, "To be successful they must be masters of their own souls." He was speaking of the Interstate Commerce Commission of which he was a member; but the statement applies no less to state commissions and boards. Like the courts such tribunals must be absolutely and completely free from political control and political manipulation if they are to function properly. These bodies are entrusted with broad administrative quasi legislative and quasi judicial powers and persons willing to be dominated or influenced by outside interference from any source are unfit to serve on them.

Again quoting in substance from the late Mr. Eastman, "they are not just tribunals for the settlement of controversies." They are creatures of the legislature, created for the purpose of guarding the public interest and at the same time giving fair treatment to the industries they are authorized by law

to regulate. It should be the high purpose of such commissions or boards to hear all matters coming before them with open minds, without bias or prejudice; and their opinions and orders should be based upon the law and the facts.

Again I quote from Mr. Eastman, "It is not necessary for the members of the tribunals to be technical experts. Zealots, evangelists, and crusaders have their value before an administrative tribunal but not on it." No greater truth could possibly be spoken. I confess that I am not a technical expert, not only in all of the many and varied functions of the commission of which I am honored to be a member, but I must confess that I am not an expert in any one field of regulation. I must and do rely upon the judgment of those whom the commission has seen fit to employ as technical experts and advisers.

That is as it should be. The field is too large for the mind and genius of any one man. It is as foolish for him to

OUR REGULATORY COMMISSIONS

undertake it as it is for an executive of a large business concern to undertake to supervise personally every minor detail of the business.

As to zealots, crusaders, and evangelists, let them give vent to their zeal. Let them carry on their crusades and evangelistic campaigns. Sometimes evangelism and crusading are necessary to convince the commissions and boards or even the public itself as to what is really needed; but the work of such forces must be conducted from the outside and not from the inside.

I close as I began by quoting from Mr. Eastman, this time quoting an entire paragraph:

"One of the great dangers in public regulation by administrative tribunals

of business concerns is the resulting division of responsibility, as between managements and the regulators, for the successful functioning of these concerns. For example, there was a tendency at one time, and it may still exist, on the part of those financially interested in the railroads to think of the financial success of those properties solely in terms of rates and wages and the treatment of rates and wages by public authorities. Sight was lost of the essentiality of constant, unremitting enterprise and initiative in management. The importance of sound public regulation cannot be minimized, but it must not be magnified to the exclusion of those factors in financial success upon which ordinary private business may rely."



Stabilizing Economic Security

"FIRST. We should set our tax-rate structure, regardless of where the burden is distributed, so that the budget at high employment will be balanced at high employment. This policy will be automatically deficit creating with underemployment, and surplus creating with overemployment.

"SECOND. We should plan and organize our public works and conservation programs to stabilize the construction industry at a high level of activity, between fifteen and eighteen billion dollars annually.

"THIRD. We must take the deflation out of social security. Broadly speaking, this means that we should finance the old-age security program so that income and expenditure about balance currently; and we should set the rates on unemployment insurance so that income balances outgo at high employment."

—BEARDSLEY RUMI,
Author, *Pay-as-you-go Tax Plan*.



Government Utility Happenings

DIFFERENCES in rates of federally financed hydroelectric projects, which threaten to prevent operation of Los Angeles area aluminum plants, must be corrected with a uniform national power policy, Northcutt Ely, attorney for the Los Angeles power bureau, told Senate surplus property investigators last month.

In the wake of a promise to reduce power charges for a limited time as an inducement to purchasers of the Southland's aluminum plants, Ely advised members of three Senate subcommittees that the nation is "now entering an era of competition between great Federal power projects." Different financing schemes for publicly built generating and distribution systems have caused differences in operating costs in individual units of the government's surplus aluminum plants, Ely said.

Rates of the Los Angeles municipal power agency will be lowered for three years for certain electrochemical enterprises, the joint Senate groups were told by E. F. Scattergood, advisory engineer of the Los Angeles department of water and power.

To meet objections that aluminum smelting costs are too high in the Southwest, the city bureau is ready to furnish energy for two spot lines at the closed-down Torrance (near Los Angeles) reduction plant on condition that a sheet-rolling mill is built to supply all needed types of aluminum for local manufacturing, Scattergood said. The present rate of \$2.10 per kilowatt will be cut to \$1.75 for three years.

A market for 120,000,000 pounds annually of aluminum exists on the Pacific coast, and southern California manufac-

turers — particularly of airplanes, oil drilling and refining equipment, automobiles and household furnishings—will need 105,000,000 pounds a year, Scattergood said.

Closing of the Torrance reduction plant was due to labor shortages, not electric costs, Scattergood said.

* * * *

THE state of Arizona has embarked on a program to place under public ownership all electric facilities within the state. The medium for accomplishing this end is the Arizona Power Authority, which was set up on March 14, 1944, at a special session of the state legislature.

Steps already have been taken to bring two of the four leading utility companies in the state into public ownership.

The power authority lost in its endeavor to prevent American Power & Light Company from selling at competitive bidding its 840,000 shares of common stock of Central Arizona Light & Power Company when the Securities and Exchange Commission on November 1st approved the proposal. The SEC held the sale and related transactions to be necessary to the simplification of the Electric Bond and Share Company's holding company system, of which American is a member.

On October 10th the authority had advised the SEC it wished an opportunity to negotiate for the purchase of the Central Arizona equity in order to build a public power system. It subsequently informed the SEC that it had filed suit and condemnation proceedings against part of the Central Arizona properties.

GOVERNMENT UTILITY HAPPENINGS

Early last month the state corporation commission rejected the proposed transaction whereby Federal Light & Trac-tion Company would sell its interest in Tucson Gas, Electric Light & Power Company to Arizona Edison Company. The commission gave no reason for its action, but it was believed to be traceable to a resumption of efforts to have the properties taken over by the city.

The city in October, 1944, had agreed to pay \$9,000,000 to purchase the Tucson properties from Federal, but the deal subsequently fell through when the city reduced its bid to \$8,500,000.

No efforts have been made to date to bring Arizona Edison Company and Arizona Power Company, the remaining private utilities in the state, under public ownership, it was reported. But this step seemingly is in prospect. A move preliminary to this may be the investigation which the Arizona Corporation Commission proposes to make of electric and gas rates charged by all four private utility companies in the state. This is being undertaken under the recently enacted governor's bill, which authorizes an expenditure of \$50,000 for the purpose. The Federal Power Commission, in response to a request of the state regulatory commission, has agreed to make experts of the FPC available for the investigation.

* * * *

SECRETARY of the Interior Harold L. Ickes has designated the Bonneville Power Administration marketing agency for all surplus electric energy from power projects authorized for construction on the Columbia, Willamette, Snake, and Flathead rivers, Bonneville Power Administrator Paul J. Raver announced on October 25th.

Under the order signed by Secretary Ickes, the Bonneville Power Administration will be responsible for marketing power from the Lookout Point, Quartz Creek, and Detroit projects, authorized for construction on the Willamette river by the Flood Control Act passed by Congress December 22, 1944; and from projects authorized by the Rivers and

Harbors Act passed March 2, 1945, including McNary dam at Umatilla, Oregon, on the Columbia river and a number of dams on the lower Snake river.

Responsibility for marketing of power from the Hungry Horse project, which has been authorized for construction on the south fork of the Flathead river in Montana under the Reclamation Act, has previously been assigned to the Bonneville Administration. Administrator Raver said:

The Secretary's order represents a major step toward full integration of existing and future Federal hydroelectric projects in the Pacific Northwest.

As the proposed new dams are constructed on the Columbia and its tributaries, the present 2,700-mile Bonneville-Grand Coulee high-voltage transmission grid will be expanded to link the Northwest's new hydroelectric power plants into the vast region-wide network of transmission lines that make low-cost power available in every corner of the region.

The new order directs the Bonneville Administrator to integrate the power facilities of all projects for which he is the marketing agent of surplus power, to interconnect these projects with publicly owned power systems, and to sell and dispose of all electric energy in accordance with the policies of the original Bonneville Act as amended.

The administrator also was directed to make surveys and undertake engineering and economic research studies necessary to promote the wider and improved use of electric energy for industrial, domestic, and agricultural purposes.

Under the Interior Department order the Bonneville Administrator is made a member of the national water resources committee with authority to participate in all surveys, investigations, or studies affecting water-power resources of the Pacific Northwest.

* * * *

CUSTOMERS of city-owned gas service should not have to pay more than they would have to pay private companies, Houston's utilities director, J. M. Nagle, said recently. He said he had not yet decided what to recommend in order to overcome the existing rate inequality,

PUBLIC UTILITIES FORTNIGHTLY

but that four or five city company users pay at a higher rate than they would pay to private companies.

Although Mr. Nagle declined to give specific instances, it was learned that an ice cream plant paid \$280.80 for the 12-month period ending in September, while if it had been buying gas from United Gas Corporation it would have cost only \$266.25. Under a different rate with the city-owned plant, available to the company but for some reason not requested by it, the cost would have been only \$233.03.

Another company, the Boss Rag & Overall Laundry, complained about a charge of \$683.73 for the 12-month period. With the private companies the cost would have been \$661.72, while under the open commercial rates it would have been \$1,259.06.

City customers who use less than 238,000 cubic feet monthly pay less than they would to private companies, it was reported.

* * * *

THE first definite step toward municipal ownership of Pittsburgh's street-lighting plant has been taken by the city council. It occurred on October 24th when members voted unanimously to advertise for the contract installation of a modern lighting system.

The ordinance calls for a contract covering a period of ten years, beginning in April, 1946. At the end of that time the contractor shall turn over free of charge to the city all equipment installed under the contract.

* * * *

MEMBERS of Governor Donnelly's Missouri legislative commission indicated on arrival at Kansas City after a 10-day official tour of the Missouri river basin that their majority report would be against a Missouri Valley Authority and in favor of the Pick-Sloan plan of river development.

It was understood that the vote on the question of an authority, similar to the TVA, would be 5 to 2, or at least 4 to 3 in the negative.

NOV. 22, 1945

Members said the report for the guidance of Governor Donnelly probably would include a recommendation that the present interagency committee be established by law as the body to carry forward the congressionally approved Pick-Sloan plan of development of the basin's water resources.

The official party, which arrived in a special car attached to a Union Pacific train, was met by a reception committee and escorted to the Hotel Muehlebach for a noon luncheon and conference with river improvement leaders of greater Kansas City. In the party were Senator Claude B. Ricketts, chairman; Senator Edward V. Long, Bowling Green, Missouri; Representative Earl S. Cook, Trenton; Representative M. M. Wright, Salisbury, Missouri; all members of the Missouri legislature, and these public members of the commission: L. T. Berthe, Charleston, and F. V. Heinkel, Columbia, president of the Missouri Farmers Association.

* * * *

CONTENDING that the construction of the St. Lawrence waterway and power project would be injurious to the nation's railroads, shipping, coal mining, public utility, and other privately owned enterprises, the executive committee of the chamber of commerce of the state of New York on October 28th made public a report urging Congress to defeat the proposed undertaking.

The report, which was to be presented by Peter Grimm, chairman of the committee, at the monthly meeting of the chamber on November 1st, criticized the project as "economically unsound" and an unnecessary expenditure of public funds in the face of an unbalanced Federal budget and huge war debt.

* * * *

THE first units of the Rural Electrification Administration to leave St. Louis for Washington were scheduled to go November 6th and 13th. Those leaving in this group included the information division, technical standards division, part of the personnel division, and

GOVERNMENT UTILITY HAPPENINGS

representatives of some other divisions. REA officials said it may take two to four months to complete the move. When it was decided to move the agency to St. Louis from Washington in 1941, about four months elapsed before the transfer could be completed.

The line construction program of REA-financed coöperatives has been moving rapidly in recent months, and was expected to provide jobs for some persons released from war work.

* * * *

KNOXVILLIANS who "stood by" Chairman David E. Lilienthal of the Tennessee Valley Authority "should be very much pleased with his double cross," Senator Kenneth D. McKellar said recently in Washington, commenting on Lilienthal's attempt to move authority offices to Muscle Shoals.

Senator McKellar, who is president pro tem of the Senate, has introduced a bill to repeal the provision in the original act making Muscle Shoals TVA headquarters, and fixing Knoxville as the TVA administrative center.

"I'm opposed to moving TVA out of Tennessee and I'm going to keep it from being done if it is within my power," the Senator said. "I obtained the original appropriation for TVA and the ones that kept it going and I'm not going to see it leave Tennessee if I can help it."

The Senator cited the following letter which he said Lilienthal had written to Representative John Sparkman of Alabama, October 1, 1945:

This is in response to your letter of September 20th. You suggest that funds be requested in our next budget to provide the office facilities needed at Muscle Shoals to accomplish the transfer of the board and management staff offices to that location.

It is our first plan to include in our budget for the fiscal year 1947 a request for funds covering the preparation of plans and designs for office facilities at Muscle Shoals. This will enable us to complete our comprehensive office development program for that location, deferred during the war, and to design the first building unit and related utilities to accommodate the board and central management staff.

This schedule will also allow time to make adequate arrangements for the many related

problems attendant upon such a transfer. A well-ordered schedule and plans for these matters will enable us to proceed without permitting these matters of housekeeping to become a major distraction from our work—the valley program.

"Now he wants to obey the law and move out of Tennessee," the Senator said. "I think the headquarters ought to be in Knoxville which is the center of all the TVA. So I introduced my bill."

It has been referred to the Agriculture Committee.

* * * *

GOVERNMENT ownership is necessary in certain cases for the good of the people, Lieutenant Governor Handy Ellis, candidate for governor of Alabama, declared in Birmingham in a luncheon address recently after emphasizing that "I am a free enterprise man."

The exceptional cases Mr. Ellis listed as follows: When free enterprise engages in exploitation, when it is unable to meet the needs or requirements of the people affected in a field or service, when the field of service is too big for free enterprise to undertake, or when the capital outlay is too great and uncertain.

As examples of the latter exceptions, the lieutenant governor referred to the atomic bomb and the Tennessee Valley Authority. The luncheon was sponsored by the downtown Lions club of Birmingham. A number of members of other civic organizations attended.

Mr. Ellis said the great difficulty is to determine when governmental ownership and operation are justified. They are "never justified unless and until it clearly appears that free enterprise cannot or will not properly occupy an area or field of service, and when there is pressing dire need for that service—and when it cannot be longer delayed." This decision is always a delicate one, he said, and since the decision has to be made in a representative government by its chosen governmental leaders, "their decisions are all important and have far-reaching effects—either for good or evil, and since they are human, we may expect errors to creep in our governmental structures."



Wire and Wireless Communication

UTILIZATION of modern automatic telephone equipment of the rotary type in the United States received impetus recently with the disclosure that the International Telephone & Telegraph Corporation, through its subsidiary, the Federal Telephone & Radio Corporation, had contracted to convert the city of Rochester, New York, from manual to high-speed automatic dial operation, according to John P. Callahan, writing in *The New York Times*.

The development was considered especially significant in communications circles since it will be the second important installation in this country of IT&T rotary automatic telephone exchange equipment.

Hitherto, this equipment has been manufactured and installed by the IT&T system in all parts of the world except the United States. Recently, the Federal Telephone Company contracted for the manufacture and installation of a rotary automatic telephone system in Lexington, Kentucky.

Students of the telephone communications industry view IT&T's entry into the domestic telephone equipment market as a distinct bid for the large potential equipment business of some 6,400 independent telephone companies in the United States. These companies, independent of the Bell system, have more than 5,000,000 telephones in service, it is estimated, with a plant investment of about \$735,000,000 and annual gross revenues exceeding \$20,000,000.

A spokesman for the American Telephone and Telegraph Company, which controls the operation of the nation-wide Bell system, on November 4th said that the installation of IT&T equipment in the country would in no way affect the equipment or operations of the Bell system. The Bell system equipment's requirements are provided exclusively by the Western Electric Company, AT&T manufacturing subsidiary.

FEDERAL TELEPHONE engineers reported that the contracts with Rochester and Lexington are exceptionally significant steps in communications manufacturing in the United States. Until World War II, they said, rotary equipment of the type developed by IT&T had been used only outside the United States.

One of the principal manufacturing operations of Federal Telephone is the development and production of automatic telephone central office equipment. This equipment is in operation throughout subsidiary telephone operating companies of IT&T, which serves more than half of the telephones in South America, Central America, and the West Indies. It has been supplied also to telephone systems in many other parts of the world. About 72 per cent of IT&T telephones in service now are of the automatic type.

Federal Telephone's latest equipment recently was demonstrated to officials and directors of the General Telephone Cor-

WIRE AND WIRELESS COMMUNICATION

poration, largest independent telephone interest in the United States. Included in the demonstration was IT&T's new unit-type dial telephone instrument. In appearance similar to any modern telephone set on office desk or home table, this set differs in that it contains no maze of connecting wires among its components.

A workman at the demonstration built an entire set from its components and had it in operation in two minutes. It can be completely disassembled in a minute and a half.

IT&T's rotary-type equipment differs from the present so-called step-by-step method of telephoning in that it permits direct dialing over long distances in areas where such equipment is installed, thus minimizing the multiple operations previously required on such calls.

Although rotary automatic telephony is new in the United States, it is well known to the world outside where, between World Wars I and II, more than 2,000,000 lines were installed in some two dozen countries. The rotary system was developed in the year following World War I primarily by IT&T's Belgian associate, the Bell Telephone Manufacturing Company of Antwerp. It was used extensively first in Paris in 1925, the contract for the conversion being awarded to IT&T French associates, Le Materiel Telephonique, when two committees appointed by the French government recommended the rotary system after having made a world-wide investigation of automatic systems.

SWITZERLAND has a rotary automatic telephone system serving 87,000 telephones in Zurich and an area extending 60 miles around it. This system was installed with the idea of making it an integral part of a nation-wide automatic network and was one of the first of its kind to be undertaken. Among its outstanding features were automatic toll switches, automatic multiple metering, and completely unattended rural offices. These offices, like many others in Europe and other parts of the world, go unattended save for routine check-ups

and watchman service. Even the urban installations are serviced exclusively by day, it having been found unnecessary to work a night shift to maintain service.

The rotary installation in Holland permits 70 per cent of all subscribers to dial their calls anywhere in the country.

Making this possible is the rotary feature of automatic toll ticketing, developed in Belgium just before World War II. This system of making automatic charges for long-distance calls by dial telephone is geared to rotary's automatic drive. It makes a complete printed record of every toll call without participation of any persons other than the calling and called subscribers. Automatic toll ticketing, which usually can be introduced with minimum modification of existing systems, replaces the cumbersome preparation of toll tickets by the operators.

* * * *

THE first international effort to restore Europe's war-damaged long-distance telephone service began in London on October 22nd at the first postwar conference of the Comite Consultatif International Telephonique, which was organized in 1923.

The CCIT conference, which was the first since the outbreak of war in 1939, sought to coordinate press, restoring long-distance telephone communications which suffered widespread devastation from Allied bombings, and the destruction caused in land battles.

* * * *

THE Federal Communications Commission last month granted the applications of Westinghouse Radio Stations, Inc., for five developmental stations to test a new method of broadcasting called "stratovision."

The commission said "it is claimed this will enable one station to serve extremely large areas, or that several stations can be made into a network rendering television, frequency modulation, and facsimile broadcast services to the entire United States."

Four transmitters will be installed in

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an airplane operating at approximately 30,000 feet—two to be used for FM broadcast tests, one for television test, and one for relaying tests to another plane. A fifth station will be located at an unspecified point on the ground to relay test signals, programs, or other communications to the plane.

The commission said the Westinghouse application indicated the experimentation would cover:

A study of effects brought about by ground reflections on signals transmitted from moving planes.

The feasibility of relaying programs from one moving plane to another.

The effectiveness of antenna designs and other compact equipment installed in planes.

Area served by transmission from 30,000 feet.

The best methods of transmitting programs and other communications from ground to plane in flight.

* * * *

A REVOLUTIONARY "toy whistle" vacuum tube may make it possible for the householder to use a radio set as he now uses his telephone. So says Dr. George B. Collins of the radiation laboratories at Massachusetts Institute of Technology, where many of the great wartime advances in radar were developed.

Collins said the tube—known as the "microwave magnetron"—greatly enhanced the detecting powers of wartime radar. He declared it may play an even more important rôle in peacetime radio communications. It may, he said, pave the way for every man to operate his own private radio station.

Though tiny in size, it produces radio waves far shorter than were available before the war and does so at powers up to one hundred times greater than was possible in prewar years. Extremely short-length radio wave "pulses" are required to allow a radar operator to distinguish between one detected object and another close by.

Before the tubes were developed, the wider wave lengths then employed would

be reflected by two or more objects at the same time, making them appear as one on a radar "scope."

These microwave magnetron tubes are credited by military authorities with a major rôle in turning the tide against the German U-boats.

The radiation laboratories recently developed a new magnetron tube which can emit continuous radio waves—rather than short pulses—and this device is therefore suitable for use in communications systems.

"This new type of microwave magnetron," said Dr. Collins, "will make possible extremely large numbers of communications channels, all of which can operate simultaneously and without mutual interference."

It appears likely that in the long run this use of microwave magnetrons will prove to be more important than their use in connection with radar. Dr. Collins stated:

Whether these magnetrons are used for purposes of radar or communication, their importance to mankind may be judged from the fact that they have made available radio waves whose frequency range is, in extent, about twenty times greater than the entire frequency range available previously.

This will permit such a large number of communications to be carried on simultaneously that it is not inconceivable that every individual in a moderate-size community could have his own private frequency on which he may be called or listen.

This is to be compared with the present situation in which there are not even enough frequency channels to supply the demand for radio stations.

* * * *

A WARTIME system of multichannel radio communication, used with outstanding success in European and Pacific battle areas to bridge the gaps where wires could not reach, soon may be widely employed in this country to augment and extend our domestic services beyond the reach of wires and cables.

Recently released from wartime restrictions, the new system was demonstrated in New York city by experts of the Bell Telephone Laboratories and New York Telephone Company. Army experts at the demonstration said

WIRE AND WIRELESS COMMUNICATION

the multichannel system as employed in the ETO finally had made it possible eventually to link any two telephones in that area.

An outgrowth of radar principles, in which a series of rapid-fire radio pulses are shot into space to detect the presence of an enemy, this system directs highly beamed short waves from station to station over distances of several hundred miles to carry as many as 144 messages simultaneously.

Newspapermen at the demonstration first witnessed, then took part in the sending of several telephone, telegraph, facsimile, and teletype messages simultaneously over a 40-mile radio link in the 5,000-megacycle region. Sending and receiving apparatus to do this had been located on the top of the telephone building at 140 West street in New York city and duplicate equipment atop a 50-foot tower at Neshanic, New Jersey.

Using eight such sets of equipment at each end of the circuit, many 2-way channels were provided between the two locations. Over each channel thus created further subdivision created 18 telegraph circuits, or 144 in all. This was done by what is known as "electronic multiplexing."

TALKING distances greater than 40 miles were made at will by electrically bending the channels and their messages back and forth through the channels thus created, on the single radio wave. The visiting group thus was able to talk and send messages over "equivalent distances" of 200, 1,400, and finally 2,000 miles—the latter distance equal to a wire circuit from coast to coast. If the circuit actually were stretched out from coast to coast it would work just as well, the experts said.

The multiplexing system which made this position is known as "pulse-position modulation," a form of FM which provides unusual stability of operation over great distances. Towers spaced fifty to several hundred miles apart would carry the cross-country transmitting stations.

Specifically, the system can simultaneously send and receive 7 telephone, tele-

type, and facsimile and 18 telegraph messages, or any combination thereof. To do this the pulse-position modulator "samples" each incoming program 8,000 times per second. This resultant conglomeration of pulses creates a complex radio wave containing all the necessary elements of the original programs, from which all the programs can be reconstructed again at the receiver.

Major General William S. Rumbough, ETO signal officer, who attended the demonstration, spoke enthusiastically about the use of such microwave in the war, adding that nearly 600 separate units of various types had been employed with great success.

Captain William R. Greer, who first took the apparatus overseas and trained men to use it, said it had been utilized extensively by Twelfth and Fifteenth Army groups, on the Rhine at Rebagen bridgehead and other strategic locations, and was capable of being quickly moved as the forces advanced. Equipment had been erected in the field, he went on, in twenty to thirty minutes.

H. A. Apfel and A. B. Clark, Bell engineers, demonstrated the apparatus.

* * * *

ARGUMENTS will be heard by the Michigan Public Service Commission at Detroit on November 27th on a petition by the Michigan Bell Telephone Company to reopen testimony in a rate case which was completed in July.

William J. McBrearty, commission chairman, explained that the case, involving possible reductions in future rates, is separate from another case in which the commission ordered \$3,500,000 cut from rates for last year. The company's appeal from that order is pending in the state supreme court.

George M. Welch, president of the company, contended in the petition that conditions have changed with the end of the war since the testimony was completed, and that "findings on presently known facts can be nothing other than speculative." A major factor in the case was avoidance of Federal excess profits taxes through rate reductions.



Financial News and Comment

By OWEN ELY

1946 Utility Tax Savings

THE 1946 tax bill, recently enacted by Congress and sent to President Truman for signature, will afford the utility companies the first substantial tax relief obtained in many years. Taxes paid by the electric utility companies have increased over fivefold in the past two decades—from \$133,000,000 in 1926 to \$703,000,000 in 1944. During that time revenues have a little more than doubled, so that the ratio of taxes to revenues has increased from 9.4 to approximately 24 per cent.

The new law reduces the income tax rate from 40 to 38 per cent and in effect levels the EPT rate from 85½ per cent (net after 10 per cent postwar credit) to 38 per cent. Thus income taxes are

reduced about 5 per cent and excess profits taxes 55 per cent. In some cases the savings may be smaller, due to the present 16 per cent surtax exemption on income equivalent to preferred dividends. Some additional saving may result from cancellation of the Federal capital stock tax.

According to the Federal Power Commission's figures for class A and B electric utilities, excess profits taxes in the twelve months ended June 30th were \$205,000,000 and the estimated saving would approximate \$113,000,000. Income taxes amounted to \$193,000,000, of which nearly \$10,000,000 may be saved next year.

The total saving of \$123,000,000 amounts to approximately 45 per cent of the amount paid out in common dividends

	Taxes (000)		Est. Savings (000)			Per Share		
	Inc.	EPT*	5% Inc.	55% EPT	Total	Tax Sav.	Rep. Earn.	Price About
<i>Elec.-gas Oper. Cos.</i>								
Black Hills P.&L.	\$ 127	\$ 24	\$ 6	\$ 13	\$ 19	\$.19	\$1.85	\$24
Boston Ed.	2,927	3,365	146	1,850	1,996	.80	2.11	45
Cent. Hud. G.&E.	551	459	28	253	280	.19	.56	11
Cent. Ill. E.&G.	329	944	16	519	535	1.33	2.04	26
Cleve. El. Illum.	2,906	645	141	354	495	.21	1.97	46
Common. Ed.	14,324	12,961	716	7,128	7,844	.62	1.78	34
Commun. Pub. Serv. ...	266	456	13	250	263	1.14	1.80	36
Conn. L.&P.	1,620	549	81	302	383	.33	2.76	59
Conn. Power	850	160	43	88	131	.20	2.33	52
Del. P.&L.	1,028	1,047	51	575	626	.54	1.20	24
Detroit Ed.	3,525	9,559	176	5,250	5,426	.86	.97	25
Duke Power	3,120	3,929	156	2,160	2,316	2.29	4.75	100
Florida Power	679	101	34	55	89	.09	1.02	17
Hartf. El. Lt.	1,040	905	52	497	549	.65	2.45	63
Houston Light.	1,511	1,419	75	780	855	1.65	4.96	84
Idaho Power	617	665	31	36	397	.88	2.39	37
Indpls. P.&L.	1,299	3,071	65	1,689	1,754	2.45	1.88	31
Iowa Pub. Serv.	180	647	9	356	365	.89	.76	16
Lake Sup. Dist. P.	208	191	10	105	115	.86	1.67	24
Mo. Utilities	125	170	6	93	99	.80	1.24	19
Mount. Sts. P.	275	354	14	194	208	.84	2.60	28
New Orleans P.S.	690	4,555	34	2,505	2,539	3.45	1.59	31

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	Taxes (000)		Est. Savings (000)			Per share		
	Inc.	EPT*	5% Inc.	55% EPT	Total	Tax Sav.	Rep. Earn.	Price About
Elec.-gas Oper Cos.								
Newport Elec.	\$ 107	\$ 59	\$ 5	\$ 32	\$ 37	\$.62	\$2.03	\$28
Pac. G.&E.	10,387	19,761	519	10,868	11,387	1.82	2.18	45
Penn. W.&P.	473	156	24	86	110	.25	4.77	81
Phila. Elec.	9,187	6,122	459	3,367	3,826	.46	1.61	29
Pub. Serv. Colo.	1,141	2,398	57	1,318	1,375	1.55	2.23	35
Pub. Serv. Ind.	1,135	5,588	57	3,073	3,130	2.82	1.93	37
San Diego G.&E.	756	2,304	238	1,267	1,305	1.04	.91	17
Sierra Pac. P.	278	100	14	55	69	.31	1.54	25
So. Calif. Ed.	4,323	13,099	216	7,204	7,420	2.33	1.60	35
United Illum.	1,700	433	85	238	323	.26	2.14	50
Wisc. Elec. P.	2,950	4,571	148	2,514	2,662	1.01	1.04	17
Elec.-gas Hold. Cos.								
Amer. G.&E.	\$8,135	\$11,880	\$407	\$6,534	\$6,941	\$1.54	\$2.42	\$42
Amer. P.&L. \$6 pfd.	5,070	15,823	254	8,700	8,954	5.07	8.41	94
Cities Serv. Co.	8,315	3,291	416	1,810	2,226	.60	3.88	25
Col. G.&E.	8,450	11,021	422	6,061	6,483	.53	.57	10
Common. & Stn. pfd. ..	11,163	22,265	558	12,245	12,803	8.70	7.68	122
Consol. E.&G. pfd.	76	3,432	4	1,887	1,891	10.83	13.02	79
Elec. P.&L.	7,500	13,036	375	7,200	7,575	1.70	1.03	18
Eng. Pub. Serv.	9,623	4,108	481	2,259	2,740	1.43	3.08	32
Fed. L.&Trac.	552	1,170	28	644	672	1.28	1.52	25
Ill. Power	354	2,924	18	1,608	1,626	2.20	1.97	32
Natl. P.&L.	3,142	7,440	157	4,100	4,257	.78	.79	13
Niag. Hudson P.	5,209	2,983	260	1,640	1,900	.19	.36	8
No. Amer. Co.	12,759	12,936	68	7,115	7,753	.92	1.34	27
Phila. Co.	3,524	3,974	176	1,635	1,811	.35	1.00	15
Pub. Serv. N. J.	14,389	8,982	719	4,940	5,659	1.03	1.06	27
Std.G.&E. \$7 pfd.	6,509	8,835	325	4,859	5,180	11.06	11.05	121
United Gas Im.	1,200	1,388	60	763	823	.36	.56	22
Manufactured Gas Cos.								
Savannah St. Aug.	\$ 66	\$ 163	\$ 3	\$ 89	\$ 92	\$2.30	\$1.42	\$18
Jacksonville Gas	57	57	3	31	34	.92	2.86	27
Natural Gas Cos.								
Okl. Nat. Gas	\$1,253	\$1,395	\$ 63	\$ 767	\$ 830	\$1.34	\$3.35	\$39
Natl. Fuel Gas	1,454	1,090	73	599	672	.18	.81	15
Lone Star Gas	2,714	3,802	136	2,091	2,229	.41	.90	15
Mobile Gas Serv.	54	300	3	165	168	2.11	1.50	18
United Gas	5,000	3,740	250	2,057	2,307	.22	.87	16
Peoples Gas	1,636	7,664	82	4,215	4,297	6.55	5.36	93
Laclede Gas L.	233	810	12	446	502	.21	.38	7
El Paso Gas	1,224	108	61	59	120	.20	3.46	45
So. Natl. Gas	1,363	19	68	10	78	.06	2.04	23
No. Natl. Gas	2,258	1,049	113	576	689	.68	3.94	44
Panh. East. Pipe L.	2,735	1,750	137	962	1,099	.67	3.23	35
Ark. Nat. Gas A.	1,516	823	76	452	528	.07	.29	6
Transit Cos.								
Balt. Transit	\$1,119	\$1,895	\$ 56	\$1,042	\$1,098	\$6.48	\$ 25	\$ 6#
Syracuse Trans.	43	666	2	365	367	6.02	4.23	25
St. Louis P.S. A.	660	1,860	33	1,023	1,056	3.61	2.06	17
East. Mass. St. Ry.	293	1,882	15	1,035	1,050	16.93	3.09	4#
Capital Trans.	797	3,392	40	1,865	1,905	7.93	3.44	34
Natl. City Lines	635	2,765	32	1,520	1,552	2.88	2.40	22
Chic. So. Sh. & So. Bend	299	309	15	169	184	.58	1.98	14
Telephone & Telegraph								
Amer. Tel. & Tel.	\$102,684	\$192,868	\$5,144	\$106,077	\$111,211	\$5.70	\$8.76	\$188
Amer. Cable & R.	1,561	558	78	307	385	.11	.63	13

*Including nonrecurring tax savings where data are available.

#There are substantial preferred arrears.

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for the same period. It would reduce the percentage of revenues paid out in taxes to around 18-19 per cent, which, however, is still above the prewar ratio.

Actually the saving may be somewhat greater since utilities have been able to avoid a considerable amount of excess profits taxes in 1944-5 by charging off premiums on refunded securities. In many cases these savings are offset by a special item, "charge in lieu of tax saving," but this item is not included in the compiled tax figures.

RELIEF from excess profits taxes should also benefit certain utilities (particularly the large Michigan companies, such as Detroit Edison, Consumers Power, and Michigan Consolidated Gas) which have been subject to political pressure to make substantial refunds to customers or rate cuts. The theory was that any rebate or rate cut would be borne to the extent of six-sevenths by the Federal Treasury (where EPT were paid), and only one-seventh by the company. Hence it was only necessary to obtain some excuse for levying the one-seventh against the company, and this was usually done in Michigan by ordering the companies to reduce depreciation, amortization, or contingency charges. The ending of EPT should cut the ground from under these special levies and restore commission rate regulation to the prewar standard of "fair return on fair value."

In the accompanying table an effort has been made to estimate 1946 tax savings for those individual companies which pay EPT and for which complete tax data are available for the calendar year 1944, or for a 1945 interim period. Nonrecurring tax savings due to plant write-offs, new financing, etc., have been included as equivalent to additional EPT, where such savings have been noted in the income account. Since many interim reports are abbreviated, it has been necessary to use calendar year figures in a large number of cases. Complete tax figures for American Power & Light, Electric Power & Light, and National Power & Light are not presented

in the annual reports to stockholders but may be obtained from special reports on file with the New York Stock Exchange.

While the savings have been converted into share amounts for comparison with reported share earnings for the same periods, it is dangerous to assume that 1946 earnings might approximate the sum of the two figures. If tax savings are substantial and the rate of return exceeds what the state commission regards as "a fair rate of return," rate cuts may be in order, either on a voluntary or negotiated basis. Also, loss of wartime industrial business, heavier operating expenses, and other factors may tend to offset tax savings.

Nevertheless, the figures indicate the great importance of the potential tax savings from the viewpoint of common stockholders.

Among the more important companies not included in the list because of probable relatively small benefits from the new tax bill are California Electric Power, Central Vermont Public Service, Consolidated Edison, Consolidated Gas of Baltimore, Derby Gas & Electric, Michigan Public Service, Missouri Public Service, Montana-Dakota Utilities, Puget Sound Power & Light, Southwestern Public Service, Tampa Electric, West Penn Power, American Water Works, Electric Bond and Share (parent company only), Twin City Rapid Transit, Kansas City Public Service, Consolidated Natural Gas (temporarily out of the EPT bracket because of its heavy explosion losses), Washington Gas Light, and International Telephone & Telegraph.

Detailed data on Federal taxes have not been readily obtainable for a few important utility companies such as Empire District Electric, Western Massachusetts Companies, American Light & Traction, Middle West Corporation, Birmingham Gas (also a number of small New England gas companies), Los Angeles Transit, Third Avenue Transit, Philadelphia Transportation, Cincinnati Street Railway, and Western Union Telegraph.

Depreciation

THE October issue of the *Analysts Journal* contains an interesting article on "Depreciation and Utility Security Analysis," by Alan W. Hastings, vice president of Engineers Public Service Company. The article points out that the depreciation problem received relatively scant attention prior to the 1930's, the telephone industry being the only segment of the utilities which developed "proper" depreciation accounting at a relatively early stage. The NARUC accounting classification of 1924 provided only for the retirement reserve method. This was generally used except in California, where the sinking-fund method had been in use for about a decade. In the early 1930's the depression served to focus regulatory attention on rates and depreciation, but it was not until 1937 that NARUC adopted a new system of accounting, though some forward-looking electric companies had already developed improved accounting methods. Up to that time there was a rather wide divergence of opinion and policy as between depreciation and "replacement" accounting.

According to a record for 17 companies compiled by an EEI committee, depreciation reserves in 1911 averaged only 3.41 per cent of plant value. In the next decade this increased to 9.37 per cent, but during the 1920's and early 1930's there was little change in the ratio, possibly due to the huge amount of new construction during that period which presumably resulted in substantial property retirements. During the period 1932-43, however, there was a rapid gain in the ratio from 9.93 per cent to 20.04 per cent. This may have been due in part to plant write-offs, as well as to increased credits to the reserve.

Mr. Hastings points out that there is still a wide divergence in depreciation policy, with reserves ranging from 3 per cent to 84 per cent. The average for 352 companies is 17 per cent. Of the three major schools of thought on the subject, one takes the position that depreciation cannot be determined except by constant engineering appraisal. This

group may even go so far as to deny any plant depreciation except to the extent of deferred maintenance necessary to insure 100 per cent efficiency. They claim that four-fifths of all retirements are due to obsolescence, inadequacy, government requirements, or other nondeterminable factors, which make it impossible to figure normal life. These executives would merely set up a reserve for equalizing annual charges. ①

THE second school of thought assumes that the estimated life of each unit of the property can be estimated, hence set up what is called the "straight-line" method of depreciation accounting. The third school takes a more scientific approach by including an interest factor (since money set aside should bear interest). This results in "sinking-fund" or other special methods of depreciation accounting. The inclusion of the interest factor is highly important, for a reserve of 20-35 per cent required under the simple straight-line method could be reduced 12-25 per cent when compound interest is taken into account. The recent trend among regulatory authorities is toward the sinking-fund method (used in California for thirty years), but the New York commission remains an outstanding advocate of the straight-line method, retroactively applied. "So far," Mr. Hastings states, "this commission has been unsuccessful in getting legal sanction for its methods, although it has made great progress administratively toward forcing adoption of the straight-line method in the state." ②

Another confusing factor is the lack of relation between income tax and book depreciation. The 5-year amortization of so-called emergency war facilities for tax purposes has caused sharp increases in the differences in recent years. The Treasury permits straight-line depreciation and, as Mr. Hastings remarked, "tax depreciation is determined on the basis of a horse trade with the tax examiner." Thus the tax figures are no scientific guide, since the utility is interested in making them abnormally large and the Treasury Department works on averages for the country and ignores ③

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physical and statistical factors such as average age, rate of growth, climate, type of construction and property, and other special factors, until their effect is apparent in the accrued tax reserves.

How do Wall Street analysts approach the problem of determining, in their study of utility security values, whether depreciation charges or reserves are correct? Rule-of-thumb tests are (1) the ratio of depreciation to revenues (less cost of purchased power), (2) the ratio of maintenance and depreciation to adjusted revenues, and (3-4) similar ratios to plant account. The second ratio was more useful prior to 1937, for before that year the state commissions did not make any rigid dividing line between expenses and capital charges. At the present time the depreciation ratio alone is probably more accurate for comparisons between companies.

Relating of maintenance and depreciation charges to plant account instead of gross revenues would normally be a more satisfactory tool than the revenue ratio, according to Mr. Hastings, but the difficulty with this ratio is that the large amount of plant write-offs in recent years tends to spoil historical comparisons for a given company, or comparisons between different companies in a given year. As the policy regarding write-offs becomes clarified and more uniformly applied, the depreciation ratio to plant account will become increasingly useful. A needed refinement in the use of the plant ratio is to obtain "depreciable" plant value, excluding land and other nondepreciable assets, but this figure is not available to the average analyst.

The accuracy of revenue ratios for historical comparisons has also been invalidated to some extent in recent years by the substantial increase in output and revenues in relation to plant, due to wartime industrial demands, heavy use of stand-by facilities, etc.

Mr. Hastings points out four major factors which the analyst should consider in studying the depreciation charge or

reserve of any individual company: (1) the rate of growth (which does not include acquisition of going properties), (2) the effect of hydroelectric or other long-life property, (3) weather (soil conditions, hurricanes and electric storms, range of humidity and temperature), and (4) the attitude of regulatory authorities (more important for short-time than longer-term effects).

Western Union Adopts Radio

WESTERN UNION TELEGRAPH COMPANY recently announced a proposed basic change in operations, supplanting the old-fashioned poles and wires with a radio system. The present 2,300,000 miles of wire channels will eventually be replaced by thousands of super high-frequency FM radio-beam stations. The new towers, which in rural areas will be steel structures with 12-foot cabins, will be operated at a distance, sending simultaneously 1,000 or more messages, facsimile and teletype. Eventually the system may be expanded to include television relays on a network basis.

The company expects to spend some \$62,000,000 over a period of years to install the new system and provide other service improvements. It is not clear whether this figure allows for the possible salvage values which might be reclaimed from existing wire lines. Thus far only a test channel has been established on an experimental basis between New York and Philadelphia, but this has proved entirely successful during some months of operation. The basic radio apparatus has been developed after twenty years of research by Radio Corporation of America, which has licensed it to Western Union. The cost of the license has not yet been revealed.

Without further data it is difficult to forecast the ultimate effect on Western Union's earnings of the new major development. Substantial write-offs in the present plant account of \$389,262,998 may be necessary, but much of this probably consists of land, real estate, and the

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international cable system. Depreciation reserve amounts to \$165,027,502 (as of December 31, 1944) or about 42 per cent of plant account.

It seems probable that Western Union will acquire the teletypewriter exchange service and leased wire-telegraph services of the Bell telephone system, which would seem to fit into its new program of expanded operations. It seems logical to expect a substantial decline in the cost of long-distance communication as the result of the new radio system, and benefits will doubtless be passed along to the public through lower rates. Use of the facsimile method will assure accuracy.

In the past Western Union has not enjoyed the same stability of earnings as the electric utilities—it was "in the red" in 1932 and 1938, for example, because of the low volume of industrial communications and the fixed overhead for maintaining facilities.

In the future, it appears likely that operations will become more diversified and the proportion of labor costs somewhat lower, thus helping to stabilize earnings.

Transit Company Stocks

PRICE-EARNINGS ratios and yields in the accompanying table of transit company stocks are obviously abnormal (as compared with those for electric-gas companies) because of the temporary wartime stimulus to earnings, and (in cases such as Baltimore Transit, Eastern Massachusetts Street Railways, and Third Avenue) the large arrears of dividends or interest on senior securities. The earnings figures in this table differ in some cases from those in the special table on tax savings, since the latter were compiled for periods in which complete tax figures were available rather than for the latest interim period.

The data for individual transit companies can obviously only be interpreted in relation to special factors affecting each company. Nevertheless, the figures here tabulated may be of interest in giving a general picture of the industry and reflecting the wide disparities in the ratios. Principal price gains since the table was last published were in Baltimore Transit, St. Louis Public Service A, Cincinnati Street Railway, and National City Lines.

TRANSIT COMPANY STOCKS

	Where Traded	Price About	Recent 12 Mos.	Share Amount	Earn. Ratio	1945 Div.	Yield About	1945 Range
Baltimore Transit	O	6	Dec.	\$.25 (d)	28.0 (d)	(a)	..	7-3
Los Angeles Transit	O	8	June	1.65	4.9	..	..	-
Rochester Transit	O	10	Dec.	1.43	7.0	\$1.00	10.0%	-
Syracuse Transit	O	25	Dec.	4.23	6.2	2.00	7.7	30-25
Twin City Rapid Transit ..S		12	June	3.04	4.0	(a)	..	15-9
Kansas City Pub. Serv. ....O		6	Aug.	.58**	10.4	(b)	..	7-5
Third Avenue Transit	S	12	Sept.	D.15	..	(c)	..	15-10
St. Louis Pub. Ser. A	O	17	Sept.	1.91	8.9	1.00	5.9	-
Eastern Mass. St. Rys. ....O		4	Sept.	3.81	#	(a)	..	5-3
Capital Transit	O	34	Dec.	3.44	9.9	2.00	5.9	-
Phila. Transportation	O	7	Sept.	.84	8.4	.80	11.4	9-5
Duluth-Superior Transit ..O		10	Dec.	2.96	3.4	NA	..	-
Cincinnati St. Ry.	O	15	Dec.	1.54	9.7	1.40	9.3	14-8
National City Lines*	C	22	Dec.	2.40	9.2	1.00	4.6	23-15
Chic. So. Shore & So. Bend O		14	Aug.	2.00	7.0	1.20	8.6	-
Market St. Ry. pr. pfd. ....S		17	Dec.	.70	†	..	..	19-16

S—Stock Exchange. C—Curb Exchange. O—Over-the-counter or out-of-town exchanges. *Holding company controlling a number of bus lines over separate local systems. **After contingency charge, the amount of which is not stated. #Large arrears on preferred stocks. †Company being liquidated. (a) Arrears on preferred stocks. (b) Initial dividend of \$3.50 on the preferred (annual amount) and 25 cents on the common were paid January 2, 1945. (c) Full interest not paid on income bonds. (d) Interim 1945 figures show sharp improvement, but there are large preferred arrears. NA—Not available. D—Deficit.



What Others Think

AGA Holds First Postwar Meeting



ATENDANCE at the twenty-seventh annual meeting of the American Gas Association at New York city, October 24th to 26th, numbered slightly over 400, although it had been expected that only 250 would attend, in view of the necessity for hasty last-minute plans, following the sudden removal of the ban on conventions.

The general tenor of this session was one of optimism, based on the postwar opportunities for the gas industry. Speakers cautioned the need for careful planning to meet successfully the competition of other fuels in current and future sales markets. Considerable interest was evidenced in the Federal Power Commission's investigation of natural gas. But the gas men appeared to regard this as a matter of even greater concern to state public service commissions. These regulatory bodies, it was pointed out in informal conversation, fear encroachment and possible interference with their functions by FPC.

New ideas for furtherance of the "New Freedom" gas kitchen program were presented by the sales promotion committee, which features a broad national advertising program and sound slide movie presentations to capture the homemaker's attention. All-gas service, now made possible through the development of a complete line of kitchen gas appliances, was considered the best approach to meet the highly competitive markets.

RALPH W. GALLAGHER, chairman of the board of Standard Oil Company of New Jersey, presented a challenging address at the afternoon session of October 24th, entitled "Leadership and American Business." He stressed the need for American businessmen to take the initiative in trying to solve pub-

lic problems, meet public demands, and answer public questions from the standpoint of industry. Showing up fallacies, he said, was most important but not enough, because it indicated only a defensive attitude and would not represent a positive response to public needs. He said:

People will follow someone who tries to find answers to their deeply felt needs. They will desert leadership which ignores their needs or which is limited to criticizing proposed solutions without putting forward any alternatives.

As evidence of this we have only to consider the support that can be obtained for what are often called "crackpot ideas" when those ideas seem to offer solutions to problems which face large numbers of people. The Townsend plan is a good example. It won thousands of followers because it offered a scheme, however impossible of practical operation, for meeting the desire of people for economic security. It lost its force following the adoption of more practical measures which attained the same objective.

Mr. Gallagher contended that so-called "crackpot ideas" are symptoms of public restlessness which may deserve more consideration than usually is given them. He added: "Let us never be so intent on pointing out the ten good reasons why something won't work that we give the impression we don't want it to work!"

J. French Robinson, retiring president of the AGA, and also president of the East Ohio Gas Company, described to the convention how the entire gas industry is mobilized for peacetime just as it was mobilized for war conditions. American business and American industry are in a process of evolution and have been for some time, he said. The war was a violent, explosive prelude to the critical period ahead, and for many months the association has been preparing for emergence from the war period.

There still is great need for purpose-

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ful, intelligent action, Mr. Robinson declared. The wartime controls of Federal agencies of the War Production Board and Petroleum Administration for War have been canceled and the gas industry is now in a position to render consumers the best service ever, he said. The association is a part and parcel of the gas industry, and is also a part of the American social economy. It will welcome changes which advance the American prosperity and will assist in all such changes that will work out advantageously to all, Mr. Robinson said.

"GOING Forward with Research and Promotion" was the title of a symposium led by Ernest R. Acker, chairman of a special committee and president of the Central Hudson Gas & Electric Corporation (Poughkeepsie, New York), revealing the development of research work through the support of member companies to the extent of \$1,000,000. Mr. Acker described how this money was being used and expressed the need for continuation of this program in the over-all interest of the gas industry. The funds are allocated to production research, utilization and general research, national advertising, and general sales promotion.

P. T. Dashiell, vice president, Philadelphia Gas Works Company, Philadelphia, serving as chairman of the gas production research committee, suggested that research in gas production methods had been of great value during the past year, due to the creation of new thinking on the problems involved, resulting in special studies to find new ways to improve production.

Guest speaker of the convention was Governor Clarence W. Meadows of West Virginia, who discussed the contributions which the natural gas industry has made to the progress of his state. He expressed confidence that such progress would continue. He pointed out that, according to a U. S. Bureau of Mines publication of 1942, 14,100 out of 56,160 producing gas wells in the United States—or approximately 25 per cent of the total—were located in the state of

West Virginia. Yet only 7 per cent of the total volume of natural gas produced came from these wells during that same year. This disparity, he said, indicates that West Virginia, although comparatively small in production, has economically sound ventures because of the high quality of gas produced and accessibility to the great domestic and industrial markets.

Over \$500,000 is to be spent on national sales promotion programs for the "New Freedom" gas kitchen, according to a report by J. J. Quinn on "National Advertising." Cooperating in this promotion, including financial support, is the Association of Gas Appliance and Equipment Manufacturers.

Lyle C. Harvey of the Association of Gas Appliance and Equipment Manufacturers, speaking on "General Promotion," warned that even greater competition would be faced in the postwar period, which further pointed to the need of continuation of the general sales promotion program being undertaken by the industry. There were reported to be 20,305,000 gas customers now being served in the United States.

IT was revealed that the FPC had requested the American Gas Association to appoint three representatives to appear before the commission for a study of the natural gas situation in relation to interstate use. AGA took the stand that it could not represent the gas industry in such a matter, but put its facilities at the disposal of FPC to supply facts and other desired information to further the study. E. Holley Poe made a detailed report (elsewhere reviewed in this issue—page 720).

Colonel Hudson W. Reed spoke on "Meeting Our Competition." According to Colonel Reed, the customer is less concerned with the small cost of gas service, provided the type of service being rendered is wholly satisfactory. He cited the need for continued promotion, but warned that statements prepared for public reading be carefully scrutinized for accuracy and ethical policies and practices.

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"I CALL IT LUCIFER CAKE BECAUSE I STARTED OUT TO MAKE AN ANGEL CAKE AND IT FELL"

J. French Robinson was given the Charles A. Munroe Award in recognition of his work in mobilizing the gas industry for wartime production and service. He was succeeded in the presidency by Everett J. Boothby, who is also vice president and general manager of the

Washington (D.C.) Gas Light Company.

Atlantic City, New Jersey, was chosen as the headquarters city of the 1946 convention, to be held during the week of October 7th. Full convention plans were proposed, including exhibits.

—J. M. R.

Poe Reviews FPC Natural Gas Investigation

ATTEMPTS by the Federal Power Commission—and supporting coal, rail, and labor interests—to extend the agency's control over the natural gas industry were sharply attacked recently by E. Holley Poe, nationally known natural

gas authority. Addressing the annual convention of the American Gas Association in New York city last month, Mr. Poe declared that the fundamental purpose of FPC's current natural gas investigation is simply to obtain evidence

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to support its case for extending its own authority.

Pointing out that it may become "next to impossible" for the FPC to piece together an objective correlation of industry information out of the "mass of extraneous and opinionated evidence presented," he said that it would, however, "supply the commission with some degree of weight and authority to bolster almost any conclusions that it may care to draw in making its recommendations to Congress."

Mr. Poe, who is in charge of directing the natural gas industry's case before the hearings, declared that the commission had already scored two other advantages:

1. The hearings have practically blocked off all competition by other governmental agencies and congressional hearings that might even discuss legislation affecting the natural gas industry. A full investigation of the entire fuel energy resources picture by any special congressional committee is now highly improbable, and the Department of the Interior is shouldered out entirely as an agency that had tried to compete for authorization to do the investigating job.

2. To the extent that disgruntled small producers have been able to gain a platform to air their grievances against pipe-line companies, the commission is able to present a picture of the industry as at war with itself.

ON the other hand, he said, the natural gas industry has made the following important gains:

1. It has to a large measure countered the "propaganda of apprehension over the future supply of natural gas" by Dr. E. DeGolyer's testimony that reserves proved by drilling in major fields already totaled at least 140 trillion cubic feet.

2. It has been supported in its opposition to enlarged Federal control by advocates of strong state regulation and conservation measures.

3. It has been backed by evidence showing that practically all areas with an excess of gas want to be able to export it without hindrance, providing only that the price is fair, and consuming areas demand that they be given unrestricted access to any production source that is willing to serve them at an equitable price.

Declaring that the natural gas industry is convinced that FPC's jurisdiction should be restricted, not enlarged, Mr. Poe said that the industry's case is being presented on the basis of these general principles:

1. We assume that the purpose of the investigation is to bolster an anticipated request to Congress, by the commission, for more comprehensive powers to regulate and control natural gas.

2. We regard it as completely impossible to separate considerations of natural gas policies from those of all other energy resources, particularly coal and oil.

3. Therefore, agencies and industries will have to be investigated that are not subject to the jurisdiction of the commission.

4. Where essential facts respecting other fuels are not readily forthcoming from voluntary industry witnesses, it must be our responsibility to direct the investigation into those neglected channels.

5. We will present, as the industry's case, all available or obtainable information that we believe falls within the scope of the commission's legitimate interest under the present Natural Gas Act as amended—and no more.

6. The summary of the industry's case will be a brief for reasonable regulation, held at the minimum consistent with the public good, and permitting freedom for economic expansion in the public interest.

TVA Article in *Collier's* Attracts Searching Comment

THE article, "The Taming of the Tennessee," which appeared in *Collier's* for August 9th, has prompted some interesting comment. It was written by William L. Chenery, the magazine's

publisher, whose authorship, perhaps, in addition to the subject being so well publicized, lent added weight in the mind of the casual reader to the writer's observations and conclusions.

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In any event, one result has been an exchange of correspondence between Ben C. McCabe, president of the National Tax Equality Association, and Mr. Chenery. While Mr. McCabe is much interested in the question of taxes, his letters touch upon several other angles in the TVA setup and cast light upon certain of the statements in the article.

Writing to Henry LaCossitt, editor of *Collier's*, on August 13th, Mr. McCabe's first comment is upon the item in the authority's 1944 annual report for flood-control expense. He made the following statement:

... Revenues of almost \$35,000,000 are reported and, roughly, \$900,000 is indicated as flood-control expense, or about 2 per cent I had been under the impression that the primary purpose of TVA was flood control. At least, that was the constitutional excuse under which Congress was given the power to grant its incorporation. In other words, approximately 2 per cent of TVA income was spent for its major purpose.

He then quotes from the *Collier's* article, "Last year, 1944, the TVA paid to state and local governments \$2,168,824," and asks:

... Why not tell the whole story? Any utility, with operating revenue of \$35,400,000, would have paid in state, local, and Federal taxes, roughly, 25 per cent of its gross, or, in this case, approximately \$9,000,000 to support the government. With tax immunity of this proportion, little wonder that TVA can sell its power for 1 cent per kilowatt. Any operating utility could do likewise if it paid so little in taxes. Furthermore, no operating utility can compete with this sort of subsidized enterprise. It follows inevitably that, if the TVA method is extended to other river authorities, private enterprise in these regions will likewise be strangled—with a tax loss to the Federal government of staggering proportions, as well as a prodigal waste of present invested capital which would result.

Mr. McCabe's letter continues:

I further notice in column 4 a statement of profit shown at \$14,116,000, and the conclusion that capital invested by our government could be paid off at this rate in eighty years with interest at 2½ per cent, or in sixty years at 2 per cent. Does this infer that TVA is paying interest on our money invested? I can find no indication of this in the record for the capital costs of building TVA are conveniently lost in the reservoir of "Interest on Government Debt." Let's split the dif-

ference, however, and assume interest at 2½ per cent. Using this rate of interest, TVA owes the government \$50,000,000 on its power investment for the past ten years. . . .

Coupled with this last statement is another jewel in column 3, "All TVA net income after expenses and contribution goes to the Federal government." This is just stuff and nonsense. If you will refer to the *Treasury Bulletin* for 1945, page 67, you will see that not one cent has been paid to the Treasury under headings: (1) repayment of borrowing, and (2) repayment of paid-in capital. . . . You will not find any net income of TVA for the past ten years which was paid to the Federal government to reduce TVA debt. True, this provision is in the charter of TVA, but the article under discussion purports to give the financial history of TVA, a realistic story of its operation. . . .

As to the question of opposition to TVA, referred to in the article as being "dead," Mr. McCabe has this to say:

I rather think Mr. Chenery's statement, "The fight against government ownership as practiced by TVA is almost as dead as the opposition to the Panama canal and the United States Post Office," is as misleading and as essentially untrue as anything in the article. I can refer Mr. Chenery to but a few of the many belligerent statements and publications, which represent a large segment of population, such as *The Voice of Labor* for April 14, 1945, speaking for the Union of Coal Miners; the Chamber of Commerce of the United States Referendum No. 81 of May 29, 1944; The Mississippi Valley Association "Facts and Fallacies," March, 1945; and the Biddle Survey, March 18, 1945. These represent labor as well as management. If the "public" can be represented by the press, one need only thumb through issues for June and July of the *Omaha World* and the *Miles City* (Montana) *Star*. These are not isolated cases, for the literature of opposition is legion, and to indicate otherwise as Mr. Chenery has done is a sin of immense importance which I cannot believe he does not recognize.

And, mind you, these are criticisms voiced by others than the electric power industry. The industry itself criticizes the TVA method because it pays little or no taxes and no interest on government funds invested. If TVA includes these costs, as *Collier's* must include these costs in its accounting, or as I must include them in mine, then TVA would need to double its rates to break even, without providing anything to reduce its investment.

At the close of this letter, he said:

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In conclusion, let me say that there is scarcely a statement of fact made in this article which does not need "footnoting," correction, or interpreting. Now, I am just a common citizen looking for factual information and for light that can be shed on this controversial issue. I am also the president of the National Tax Equality Association representing thousands of small businessmen located in all sections of the country and in all types and kinds of business activity.

We are going to urge our membership and our business associates, particularly small business, which is feeling the pressure of subsidized competition, no longer to tolerate seeing a large portion of the reading public consciously misled by articles of this kind. Genuinely honest differences of opinion are part and parcel of the American heritage which your publication most certainly has a right to exercise in its editorial columns; but to give your readers opinion disguised and masqueraded as fact is to be condemned in a publication with the *Collier's* tradition. Certainly an article based on observable fact should be treated with a high degree of intellectual honesty. . . .

This letter we shall send to our entire membership and many business organizations with large membership lists throughout the country. If your readers are to continue to have confidence in the integrity and the essential morality of your reporting, then what is "opinion" and what is fact should be made available to both sides of this controversy in your publication.

MR. CHENERY, under date of September 7th, wrote to Mr. McCabe in reference to the latter's letter to *Collier's* editor, Mr. LaCossitt. In his letter Mr. Chenery replied thus to certain of the criticisms made by Mr. McCabe:

You are in error, I think, in stating that the primary purpose of the TVA was flood control. There wasn't much uncertainty either in Congress or in the press discussions at the time the TVA Act was passed of the fundamental purpose. Flood control, navigation, and power production were all objectives. The debate in Congress was perfectly explicit.

When the constitutionality of the act was argued in the Supreme Court, emphasis was put on navigation and flood control. If you visit the country, you will find that a quite adequate and successful plan of flood control has been put into effect.

There is no concealment by the TVA or by anybody else on the payments by the TVA to local governments in lieu of taxes. You will find if you care to a letter signed by the three directors under date of December 22nd

last directed to the Speaker of the House of Representatives and the president of the Senate giving a full report on this matter. Of course, it is true that the Federal government pays no taxes to itself on the TVA operation.

The TVA is paying interest only on the bonds. It is not paying interest on the money directly appropriated from the Treasury. It is true, however, that on the basis of the sum allocated to power production, approximately \$500,000,000, the TVA is earning power revenues that make it a completely solvent business measured by private standards. Such, at any rate, is the opinion of utility men in the region and the arithmetic seems to be right.

I was not discussing in my article the propriety of the United States government expending \$500,000,000 in power development in the Tennessee valley. That question was settled in 1933. What I sought to do was first to understand the effects of this investment and second to tell as plain a story as I could of what had happened following this investment.

The statement that the fight against government ownership as practiced by the TVA is almost as dead as the opposition to the Panama canal and the United States Post Office is neither misleading nor untrue. There is no popular opposition to the TVA in the Tennessee valley and very little political opposition and that quite impotent. As the vote in the Senate showed, there is almost no opposition to the reappointment of David Lilienthal. . . .

MR. McCABE, on September 22nd, made acknowledgment to Mr. Chenery, touching upon certain points in the former's letter:

Your letter of September 7th is before me, and I sincerely appreciate the detail with which you answered my letter. . . .

I think nothing much is gained in prolonging this controversy, but I do think it well that one or two items be canvassed.

In paragraph 8 of your letter you now mention that "there is no popular opposition to the TVA in the Tennessee valley." Now, I have reread your original article and, my dear sir, nothing whatever was said about the opposition in the Tennessee valley. The original manuscript indicates merely that there is no opposition, for your statement said, "The fight against government ownership as practiced by TVA is almost as dead" etc., and for that reason I believe my comments are supportable and correct. I would not expect that there would be much opposition in the Tennessee valley, for the farmers who are receiving free fertilizer, undercost electricity, as well as being the recipients of other government bounties, certainly should not complain.

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"NOW WE'RE GETTING SOME PLACE—THE LEAK SHOULD BE BETWEEN HERE AND THE SIDEWALK"

Paragraphs 5, 6, and 7 of your letter confuse me a little, for I believe that they beg the whole question. I don't see how you can maintain that "The TVA is earning power revenues that make it a completely solvent business measured by private standards," when in the two or three lines before you admit that TVA is not paying interest on its investment. I feel very sure that the Crowell-Collier Publishing Company includes as part of its cost of doing business interest on its investment. Certainly good accounting procedure would demand that this be an item of cost.

In concluding his letter, Mr. McCabe said:

For your information I am presenting the
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actual income statement presented by TVA, but with adjustments necessary in order that this business may be compared on the same basis as any private company. I am merely adjusting TVA income statements by deducting interest on the power investment at 24 per cent as well as the taxes which would have been paid had this been a privately owned utility company. [See page 725.]

With the following paragraph, Mr. McCabe closed the correspondence:

This is certainly a legitimate procedure if one is to make a comparison of like quantities. The whole controversy becomes grotesque unless the accounting procedure is the same.

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ADJUSTED INCOME STATEMENT GIVING EFFECT TO INTEREST AND TAXES

	1941 (000)	1942 (000)	1943 (000)	1944 (000)
Power revenues	\$21,000	\$25,300	\$30,700	\$35,400
Operating expenses	7,434	13,591	9,975	11,647
Gross operating income	13,566	11,709	20,725	23,753
Add payment in lieu of taxes	1,499	1,860	1,960	2,169
Less depreciation and amortization	15,065	13,569	22,685	25,922
Interest at 24%	4,878	5,600	5,900	6,876
Taxes at 25% of revenues	4,545	6,370	8,055	9,072
	5,250	6,325	7,925	8,850
Net operating income	\$ 392	\$(4,726)	\$ 805	\$ 1,124
Net operating income shown by TVA	\$ 6,990	\$ 3,673	\$14,000	\$14,116

	<i>Net operating income shown by TVA (000)</i>	<i>Net operating income after adjustments</i>
1941	\$ 6,990	\$ 392
1942	3,673	(4,726)
1943	14,000	805
1944	14,116	1,124
Total	\$38,779	\$(2,405)



It is obvious that the only way TVA could possibly show the profit which is made public through its capricious bookkeeping would be for it to have doubled its power revenues and this would have meant doubling its rates. . . .

Such direct exchange of views as this correspondence discloses may perhaps be helpful in casting more light upon some of the controversial phases of the TVA situation.

Production and Confidence Basic Needs

In a recent issue of the monthly letter of the National City Bank of New York comment is made upon the British elections. Whether the Labor government will realize its social aims must depend in last analysis, the letter observes,

upon the ability of the British economy to yield and pay for the benefits which so many of the British people expect to receive. That in turn depends upon productivity. If the effort to provide "a high and constant purchasing power . . . through good wages, social services and insurance, and taxation which bears less heavily on the lower-income groups" (the quotation is from "Let Us Face the Future") is pushed faster than the economy can support it, the value of the "pur-

chasing power" distributed will be illusory, for it will be lost through unemployment or through inflation, perhaps both.

Then this extract is quoted from an address of Lloyd George after World War I in his successful campaign for reelection. His words have such a distinct bearing upon the conditions today that they are worth reading:

You cannot have improved wages and improved conditions of labor all round unless you manage to increase production . . . There is one condition for the success of all efforts to increase the output of this country—confidence . . . You must give confidence to all classes, confidence to those who have brains, to those who have capital, and to those with

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hearts and hands to work. I say to labor, you shall have justice; you shall have fair treatment, a fair share of the amenities of life, and your children shall have equal opportunities with the children of the rich. To capital I say: You shall not be plundered or penalized; do your duty by those who work for you, and the future is free for all the enterprise or audacity you can give us . . . And when the whole nation sees that wealth lies in production, that production can be enormously increased, with higher wages and shorter hours, and when the classes feel confidence in each other, and trust each other, there will be abundance to requite the toil and to gladden the hearts of all. We can change the whole face of existence.

THE letter observes that while Lloyd George offered a great deal, it was only in return for production, and on that the Labor program eventually must stand or fall.

Attention is called in this letter to a re-

port in the New York press regarding the election, quoting these words of Senator Aiken of Vermont:

. . . the presence of 2,000,000 American soldiers in the British Isles must have opened the common people's eyes when the GI's referred to the homes and cars and other conveniences back home.

As to that remark, the writer of City Bank's letter makes this pertinent comment: "But the thought prompted by this statement is that the homes and cars, the modern conveniences, and other evidences of high living standards in the United States, as described by the GI's in Great Britain, are the achievement of a long history of free enterprise, not of state planning or control; and of a system of private enterprise, not of state management or nationalized industries."

—R. S. C.

Congress Considers Science Bills And Atomic Power

FOLLOWING up its report in May on "Wartime Technological Developments" (referred to in the FORTNIGHTLY, issue of August 2, 1945, page 198), the subcommittee on war mobilization of the Senate Military Affairs Committee issued in August two documents having to do with the promotion of science.

One of these pamphlets, "Legislative Proposals for the Promotion of Science," contains reprints of five bills on the subject of national defense and science legislation, with a table which lists the major points of these bills, providing a brief comparison of them.

The other pamphlet, "The Social Impact of Science," is a select bibliography, with a section on atomic power, compiled by the Librarian of Congress. Senator H. M. Kilgore (Democrat, West Virginia), chairman of the subcommittee, states in the preface: "The importance of science to the citizen, in peace and in war, has become increasingly recognized. . . . The opening of the atomic age is perhaps

the most significant fact of our generation. . . . The Senate has before it a number of bills dealing with scientific matters. I hope that this bibliography may be of use to members of the Senate and to the public."

The control of the future developments and use of atomic energy for peaceful purposes will rest with Congress. Already bills have been introduced upon this subject. Such legislation as is finally passed may have definite impact upon business-managed utilities. A thought-provoking and analytical comment has already been made upon this phase of the situation in a recent article, "An 'Atomic Era' for Utilities?" (in the FORTNIGHTLY, issue of September 13, 1945, page 349).

The bibliography and other pamphlets referred to may be obtained from the Superintendent of Documents, U. S. Government Printing Office, Washington, D. C.

—R. S. C.

The March of Events



FCC to Investigate Recorder Device Uses

A BROAD investigation was voted by the Federal Communications Commission on October 31st into the use of recording devices with respect to interstate and foreign telephone communications. As a result a general hearing has been ordered for January 10th. The proceeding arose with respect to tariffs filed by six Bell system companies and one independent company, which would forbid the use of recording devices in connection with the use of telephone facilities.

The six Bell companies are Bell Telephone Company of Pennsylvania, Diamond State Telephone Company, and the four Chesapeake & Potomac Telephone companies. The independent company is Bluefield Telephone Company of Bluefield, West Virginia.

Copies of the investigation order were ordered to be served on all telephone companies subject to FCC jurisdiction, including both Bell and independent. In addition the following eight manufacturers of recording devices are being served with the order: Soundscribe Corporation, Dictaphone Corporation, Thomas A. Edison, Inc., American Type Founders Association, Gray Manufacturing Company, Frank Rieber, Inc., Memovox, Inc., and the Speakphone Corporation.

The National Association of Railroad and Utilities Commissioners, the United States Independent Telephone Association, and all state regulatory commissions are likewise being sent copies of the order and invited to participate to the extent of their interests in the subject.

The FCC investigation order laid down eight points of inquiry which will define the scope of the investigation. These are as follows:

1. The nature and extent of the need for the use of recording equipment.
2. The possibility of interfering with the privacy of telephone communication.
3. Whether suitable protective devices are or can be developed.
4. Whether the tariffs of the six Bell companies and the independent company prohibiting the use of the device are lawful.
5. Whether the FCC should itself prescribe a tariff covering the subject, and, if so, what kind of a tariff.
6. The extent to which the use of a recording device is covered by § 605 of the Communi-

cations Act (dealing with the secrecy and confidential nature of communications service).

7. Whether Congress should enact further legislation.

8. Whether present usage of recording devices amounts to violation of existing laws and regulations.

The use of the phrase "interstate and foreign toll telephone service and facilities," which occurs in the FCC order of investigation, suggests that the commission may confine its investigation, from a legal standpoint, to the use of recording devices in relation to toll telephone service, as distinguished from local exchange service.

It was not immediately known whether the manufacturers of recording devices, which are, of course, not themselves subject to the Communications Act, will raise the jurisdictional issue in responding (or declining to respond) to the order of investigation.

FPC Sets Further Hearings

THE Federal Power Commission on November 1st announced that it had set three further hearings in its natural gas investigation (Docket No. G-580). They are scheduled for February 11th in Biloxi, Mississippi; February 19th in Chicago, Illinois; and March 19th in Charleston, West Virginia. All will begin at 10 A. M. Specific meeting places will be announced later.

In a letter to all interested parties, Supervising Commissioner Nelson Lee Smith stated that the Mississippi hearing would conclude the hearings in the mid-continent area and pointed out that so far the investigation has dealt primarily with the problems of the so-called "producing" areas. The letter added that, in the hearing at Charleston, the commission is anxious that there be a presentation of the problems of the Appalachian producing area, but at this hearing and at Chicago it desires to hear fully from the so-called "consuming" interests, public and private.

Security Underwriter Practice Censured

THE business conduct committee, District No. 13, of the National Association of Security Dealers, Inc., has decided to censure Halsey, Stuart & Co., Inc., of Chicago, Illinois, as a result of a complaint made by the

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Connecticut Light & Power Company earlier this year. C. L. Campbell, president of the Connecticut Light & Power Company, stated his complaint was based upon methods of the Chicago firm in seeking to obtain the business of underwriting the securities of the company, for many years handled through local Connecticut brokers.

In its finding the business committee of the National Association of Security Dealers, Inc., accused the Chicago organization of planning a "last-minute attempt to embarrass and harass complainant into doing business on respondent's terms and regardless of all other considerations."

The committee further charged that the investment concern had "indulged in high-pressure tactics without proper consideration for complainant's wishes and without observance of elementary principles of decency and courtesy which are inherent in the conception of high standards of commercial honor."

FPC Orders Hearing

THE Federal Power Commission recently ordered a hearing held on an application of the Michigan-Wisconsin Pipe Line Company, whose principal place of business is in Chicago, Illinois, at 10 A. M., January 8th, at Washington, D. C. The application requests authority to construct a natural gas pipe line from Hansford county, Texas, to supply a number of markets in the North Central states, and to acquire 140 miles of gas line and appurtenances which are to be constructed by the Michigan Consolidated Gas Company, both at an over-all cost of \$70,000,000.

More specifically Michigan-Wisconsin pro-

poses to construct and operate 1,216 miles of 26-inch and 22-inch pipe line, together with compressor stations having an aggregate of 104,600 horsepower, extending from the Hugoton gas field in Hansford county, Texas, in a general northeasterly direction to the Austin gas storage field in Mecosta county, Michigan, and including lateral lines in Missouri, Iowa, Illinois, and Wisconsin.

In addition, the company proposes to purchase a 26-inch transmission line about 140 miles in length extending from the Austin gas storage field to a point near the city limits of Detroit, Michigan, and other facilities including gas storage facilities in the Austin and other gas fields. The facilities to be purchased are to be constructed by the Michigan Consolidated Gas Company and operated by Michigan-Wisconsin pending the proposed acquisition by Michigan-Wisconsin.

The entire construction project is planned on a 4-year basis with about 1,076 miles of the main pipe line to be completed at a cost of \$49,000,000 within the first year. If the construction and purchase are effected, Michigan-Wisconsin expects to make sales of about 105,120,000 MCF of natural gas yearly after the first five years.

The districts to be supplied include Milwaukee, Racine, Beloit, Janesville, and Madison, Wisconsin; Rock Island and Moline, Illinois; Des Moines, Davenport, Cedar Rapids, Ottumwa, Fort Dodge, and 36 smaller Iowa communities; and Maryville, Missouri. In the fifth year all of the above would be supplied plus the entire requirements of Michigan Consolidated, which at present is obtaining natural gas from Panhandle Eastern Pipe Line.

Alabama

FPC Modifies Order

THE Federal Power Commission recently announced its order modifying one entered July 25, 1941, disposing of claimed actual legitimate original cost of the Martin dam hydroelectric development (Project No. 349), Alabama Power Company, licensee. Out of a total of \$17,561,280 claimed by Alabama Power Company as actual legitimate original cost of the project as of December 31, 1927, the commission's recent order allows \$15,328,092 as project cost, and disallows \$2,233,188. The earlier order fixed the cost at \$15,209,611, a difference of \$118,481 which, upon consid-

eration of the opinion and judgment of the United States Circuit Court of Appeals for the Fifth Circuit in *Alabama Power Company v. Federal Power Commission*, the commission has allowed as original cost of the Martin dam.

Martin dam is located on the Tallapoosa river in Alabama, approximately 80 miles southeast of Birmingham. It was constructed under plans approved by the commission and consists principally of a mass concrete spillway dam, 154 feet high and 1,300 feet long, which creates a reservoir extending more than 30 miles upstream, and a power house with installed capacity of 99,000 kilowatts.

Arkansas

Plans Statewide Expansion

DISCLOSING that the Arkansas Power & Light Company is now in an extensive 5-

year study which eventually will result in spending of millions of dollars for expansion throughout the state, C. Hamilton Moses, president of the company, announced last

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month at Wynne that approximately \$75,000 is being spent on new transmission lines leading into Wynne.

Mr. Moses said that the amount of power available for industrial development in Wynne had been doubled through recent installation of a larger transformer in the Parkin substation, source of Wynne's electric power. The new transformer is of 4,000 horsepower capacity.

A new transmission line has also been completed into Wynne, giving the city a new source of supply.

More than \$1,500,000 is being spent by the company to increase power supply for its eastern Arkansas territory, he said. This includes a new 110,000-volt transmission line from Pine Bluff through Clarendon, Brinkley, Stuttgart, and Marianna to Helena.

California

File Pipe-line Application

THE Southern California Gas Company and the Southern Counties Gas Company recently filed a joint application with the state railroad commission for permission to construct and operate 214 miles of natural gas pipe lines from Blythe to Santa Fe Springs.

The line will have an initial daily capacity

of 175,000,000 cubic feet and an ultimate capacity of 305,000,000 cubic feet, and will cost \$15,000,000.

It would connect with existing gas pipe lines at Santa Fe Springs for distribution throughout southern California.

F. S. Wade, president of the two companies, said the gas will be purchased from the El Paso (Texas) Natural Gas Company.

Illinois

Hold "Dignity" Strike

SOME 75,000 Chicagoans and suburbanites were denied transportation on the elevated lines for two hours on October 24th when the trainmen's union staged a 2-hour protest stoppage. The strike was in effect only between 1 and 3 p. m., but it was reported to be well into the 5 o'clock rush hour before the tangle of trains was unsnarled and anything like normal service was resumed.

William F. Levander, president of Division 308, Amalgamated Association of Street and Electrical Railway Employees, AFL, explained the stoppage variously as "proof our union will preserve its dignity," and "proof we don't like other groups being put ahead of us."

The cause of the "dignity" strike was a retroactive pay increase won by the employees last August after a year of negotiation. The company had to figure out the amount of more than a year's back pay for its 4,300 operational employees, who work on an hourly basis, and for 450 white-collar workers, who are paid by the month.

It was simple to figure out the office workers' pay, an official said, but an extra force of thirty to sixty workers had to be added to the night staff to compute the pay of the operational employees, with the task not scheduled

for completion until some time this month. Piqued by the payment to the white-collar workers, the union voted for the work stoppage.

Prospects for an immediate raise of elevated fares to 12 cents faded on October 26th when Daniel A. Covelli, master in chancery for the circuit court, continued a hearing on the necessity for the increase of 2 cents until November 28th.

Judge Philip Finnegan of the circuit court had instructed Covelli to take testimony to show whether the elevated system is earning operating expenses. Under a decision of the Illinois Supreme Court, the company is entitled to temporary relief if income does not meet costs.

The delay was opposed by Attorneys William C. Jones for the attorney general, William H. Sexton for the city, and Harry R. Booth for the Office of Price Administration. All are fighting against the fare increase.

Without dissent the city council on October 25th adopted two ordinances approving the wiping out of \$7,000,000 of claims against the Chicago Surface Lines and of \$9,000,000 claimed by the lines against the city. This was done at the request of the Chicago Transit Authority, which hopes to buy the surface and elevated lines and operate them.

Indiana

City to Employ Expert Aid

THE city, which once declined to enter the fare case of Indianapolis Railways, Inc.,

has changed its mind. After a public hearing by the city council on November 1st, attended by several dozen persons, Mayor Robert H. Tyndall said the city will be represented when

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the state public service commission holds a public hearing at the end of the 3-month trial of the new fares December 15th.

While the matter was being threshed out a little more than a year ago, the city decided against participating in the case "because the public prosecutor had all the facts needed and we had no facilities for such a thing," according to Sidney S. Miller, who was city corporation counsel at the time.

Mayor Tyndall's chief interest is in "seeing to it that the city obtains sufficient pay from the transit company for its use of city streets and that service to the public is good. The establishment of rates is a task that the public service commission alone is equipped to perform.

"The commission has the experts to obtain information on which rates may be judged. The city does not."

Kentucky

City Overruled on Interim Rates

THE state public service commission on October 30th overruled all city of Louisville efforts to file motions asking for interim rate reductions on electricity from the Louisville Gas & Electric Company while the city's main \$3,400,000 rate reduction plea remains undecided.

First the city's motion that the company show cause why its residential electric rates both inside and outside Louisville should not be reduced at once to TVA schedules, on the showing already made in the case, was ruled "not germane to the case we're trying" and was not permitted to be filed.

Then Spencer W. Reeder, Cleveland attorney employed by the city, and other city counsel went into a huddle and came back with another motion. This was a show-cause motion for an immediate reduction in electric rates, on the showing already made, without reference to TVA rates. The commission would not allow this motion to be filed either.

Commission Chairman Thomas B. McGregor said, "The primary idea we have before us is a motion addressed to us for some time now; we'd like to get that out of the way." He referred to the company's motion for a dismissal of the city's main case, or for "an interlocutory order, finding, or opinion."

Co-ops Oppose Petition

THE state public service commission recently postponed a hearing on the Kentucky-West Virginia Power Company's request to extend its lines in eastern Kentucky. The Big Sandy and the Cumberland Valley Rural Electric cooperatives said certain of

the extensions were involved in a suit pending in circuit court at Frankfort.

P. H. Hyden, commission secretary, said its members indicated they wanted to clear up that point before proceeding with a hearing, and no date was set for resuming proceedings.

The extensions requested by the company total 549 miles and would be in Breathitt, Johnson, Knott, Leslie, Letcher, Magoffin, Martin, Perry, and Pike counties.

In addition to joining with Big Sandy in opposing the power company's petition, the Cumberland Valley co-op filed a petition requesting permits to extend its lines in Leslie county, 50 miles total; Letcher, 24.5; and Harlan, 14. A hearing was set for November 27th.

Buys Gas Firm

SALE of the Western Kentucky Gas Company to W. T. Stevenson, Owensboro, owner of the Owensboro Gas Company, was announced last month by L. E. Ingham, vice president of the Kentucky Natural Gas Corporation. The Western Kentucky Gas Company was a wholly owned subsidiary of the Kentucky Natural Gas Corporation.

Simultaneously, Stevenson announced a merger of the Owensboro Gas Company and the Western Kentucky Gas Company, effective November 1st. The merged concerns would be operated thereafter as the Western Kentucky Gas Company.

Stevenson, who was president of both the Owensboro Gas Company and the Western Kentucky Gas Company, will be president and treasurer of the new company. Other officers are J. L. Bugg, vice president and general manager; J. W. Gilbert, vice president; Miss Priscilla Head, secretary; J. R. McCandless, assistant treasurer; and Carrol E. Byron, assistant secretary.

Louisiana

New Gas Policy Proposed

P. A. FRYE, executive director of the Louisiana Natural Gas Conservation Committee, declared at Baton Rouge recently

that Louisiana would seek amendments to the Natural Gas Act to prevent depletion of Louisiana's supply of gas through piping of reserves to other states.

Frye said "very definite" suggestions and

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recommendations would be made at the Federal Power Commission hearing in New Orleans regarding policies in administering the Natural Gas Act. The New Orleans hearing, was scheduled to open November 12th.

"We propose among other things," Frye said in an interview, "to recommend that the

Natural Gas Act be amended so as to authorize and make mandatory that the FPC in considering applications to build new interstate lines give consideration to the social and economic effects of the building of such lines on the origin as well as the destination territories to be served by them."

Michigan

Ordered to Pay Rebates

A state public service commission order directing the Detroit Edison Company to rebate \$10,450,000 to its 1944 customers was affirmed by Circuit Judge Archie D. McDonald recently.

The company had appealed an order originally entered August 4, 1944. The commission order was designed to reduce rates of the electric company to the point where payment of Federal excess profits taxes would be unnecessary. The company argued the order was illegal, unlawful, and confiscatory.

W. J. McBrearty, commission chairman, termed the decision a "sweeping victory" for the commission's theories. He said that, if the state supreme court affirms Judge McDonald's decision, it would result in a reduction of approximately 11 1/2 per cent to some 800,000 consumers.

Discharged for "Misconduct"

THREE employees whose dismissal drew protests from the Utility Workers Union (CIO) were discharged for "misconduct" in interrupting or attempting to interrupt essential services, the Consumers Power Company said recently.

"The three men were not discharged for participating in a strike," said the statement issued by M. W. Arthur, vice president of the company. "They were discharged for misconduct in connection with the interruption of essential services in Muskegon and an attempt to do likewise in Grand Rapids, which the management believes fully justifies the action taken."

The men dismissed were Harold Wilson, president of the Muskegon local, and W. K. Beckwith, and Wilson Boyle, bargaining representatives for the Grand Rapids local.

Minnesota

Rate Cut Order under Study

THE state railroad and warehouse commission recently took under advisement argument on its show-cause order against various bus lines operating in the state as to why they should not lower their fares.

The order was based on excess profit taxes the companies paid the Federal government during the war, which the commission felt tended to show that fares were larger than necessary.

The order was against Greyhound Lines,

Inc., Jefferson Transportation Company, and Jack Rabbit Lines, Inc.

Ivan Bowen of Minneapolis, appearing for the Greyhound firm, said that it would be poor policy to base future peacetime rates on swollen wartime business and profits. He also pointed out that the bus lines have steadily reduced fares through the years—for example, he said, the fare to Mankato was \$2.50 in 1926 and is \$1.35 now.

He added that basing rates on taxes paid the Federal government smacks of interfering with the Federal government's taxing powers.

Missouri

Utility Sues over Rates

SUITS for \$390,212 was filed in circuit court at Belleville on November 2nd by Union Electric Power Company, Illinois subsidiary of Union Electric Company of Missouri, against Illinois Power Company, operating in a large area near St. Louis, in a dispute over rates.

Allen Van Wyck of Decatur, Illinois, presi-

dent of Illinois Power, said the suit was "part and parcel" of one phase of his company's large claims against North American Company and North American Light & Power Company pending before the Securities and Exchange Commission. Illinois Power, formerly a direct part of the utility chain of North American, which controls Union Electric, asserts that rates charged it by the Union Electric system for current obtained from the

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Cahokia and Venice plants are excessive.

The suit seeks to collect the difference between Union Electric bills for \$3,143,212 for power sold in the 11-month period, beginning last November and ending last September, and \$2,753,000 stated to have been paid by Illinois Power. Van Wyck conceded that the full bills had not been met, in the belief the larger amount was not owed. Union Electric set forth that lump sum payments were made by Illinois Power, overlooking a provision for a variable scale.

Take over Utility Property

OPERATION of electric transmission and distribution facilities, formerly owned by

the Missouri General Utilities Company in seven southeastern Missouri counties, was taken over on November 1st by five rural electric cooperatives and the city of Rolla, Rural Electrification Administration headquarters in St. Louis announced recently.

The cooperatives obtained loans from REA totaling \$1,200,000 to finance their part of the acquisition.

The co-ops participating in the acquisition are Ste. Genevieve Electric Cooperative, Inc., Ste. Genevieve; Intercounty Electric Cooperative Association, Licking; Scott-New Madrid-Mississippi Cooperative Association, Sikeston; Black River Electric Cooperative, Iron-ton; and Crawford Electric Cooperative, Inc., Bourbon.

Nebraska

Rate Cut Announced

EIGHTEEN days after the city of Lincoln announced another 5 per cent reduction, the Consumers Public Power District came through with a "rate-matching" announcement.

John E. Curtiss, district manager, said recently that the current reduction by Consumers, effective on November 1st billings with benefits dating back as far as October 1st, duplicated the city rate structure—a reduction averaging 5 per cent. "It means a saving to Lincoln patrons of Consumers of approximately \$75,000 annually," Mr. Curtiss said. The city plant's reduction, announced October 8th, was estimated at \$16,000.

He stated that perhaps Consumers should be given credit for the reduction and possibly for three previous cuts within the past four and one-half years. All were suggested by the city to Consumers. If it were not for the competition of a type as furnished, he suggested, the city may not have thought of reducing the price of electricity.

Utility Receives Permanent Certificate

THE Federal Power Commission recently issued to Northern Natural Gas Company, a Delaware corporation with its principal place of business in Omaha, Nebraska, a certificate of public convenience and necessity which (1) replaces a temporary war emergency authorization to operate facilities serving the Farm Crops Processing Corporation, and (2) authorizes the construction and purchase of additional pipe lines to supply natural gas to the American Smelting & Refining Company, both in Omaha.

The facilities serving the Farm Crops Processing Corporation, which operates the Omaha alcohol plant for Defense Plant Corporation, include 6.84 miles of 84-inch pipe line, including 0.27 miles of pipe line under-

crossing the Missouri river, and appurtenances, extending from the company's Council Bluffs town border station to a point in Douglas county, Nebraska, and a measuring station. By its order of November 11, 1943, the commission authorized the construction and operation of these facilities for "the duration of the present war emergency but not beyond ninety days after the cessation of hostilities."

The facilities were placed in operation January 28, 1944, and in its application Northern Natural estimated that about "1,500,000 mcy of gas would be required annually at the alcohol plant for an indefinite time in the future." The entire production of alcohol is delivered to Defense Supplies Corporation, a Federal agency, for use in the production of synthetic rubber.

The proposed construction and acquisition, according to the company's application, will effect certain economies in its service to American Smelting & Refining Company and also result in greater utilization of the pipe line which serves the alcohol plant.

Power Review Set

THE power committee of the legislative council will meet at Nebraska City December 6th to review the steps by which the city of Lincoln voted last June to buy the local properties of Consumers Public Power District.

H. J. Wisner, Scottsbluff, president of Consumers, requested the hearing. He charged loose, reckless, and misleading statements were made during the campaign which, he said, reflected seriously on the integrity of Consumers and imperiled the entire public power program in the state.

Consumers is not contesting the outcome of the election in which Nebraska City voters agreed to issue \$950,000 revenue bonds to purchase the district's generating and distribution facilities there, he said. Wisner objected

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strenuously, however, to the method by which the vote was secured.

The legislative council last September 21st unanimously agreed to investigate the elections. Named to the special committee were Senators James H. Anderson, Scottsbluff; Cliff Ogden, Omaha; Joseph Reavis, Falls City; Dan Garber, Red Cloud; and C. Petrus Peterson, Lincoln.

The mayor of one Nebraska city took issue with Consumers Public Power District recently, while two other municipal chief execu-

tives refused comment on Consumers' policy regarding ownership of local power facilities, announced in a statement on October 31st.

Mayor Bert A. Manning of Beatrice challenged the statement, while Mayors Harry Grimminger of Grand Island and Paul Burgeson of Holdrege offered no comment.

"It is a typical Consumers offer," Manning said. "Neither the Beatrice commissioners nor citizens would be willing to hand over the electric department. It is our only defense against complete monopoly tactics."

New York

Accepts Electric Rate Cut

THE New York State Electric & Gas Corporation, it was announced on October 24th, accepted an order of the state public service commission, reducing its revenue \$1,154,000 in electric rates in 45 upstate counties.

Of the total amount, residential customers in urban and rural communities will benefit by \$723,600; customers in the general classification, small commercial users, will have a reduction of \$185,400; and industrial customers will save \$244,900.

The revised rates in the industrial classification were already in effect, it was said, and the bulk of the residential and general classifications were to begin November 1st, except in the Liberty district of Sullivan county where the new rate would become effective November 15th.

The commission after an examination notified the company that its earnings merited a reduction, and a formal proceeding was started. Conferences between the company and the commission resulted in an agreement and the proceeding was halted.

Stockholders Back Consolidation

CONSOLIDATION of Buffalo, Niagara & Eastern Power Corporation with three of its subsidiaries was approved on October 29th at a special meeting of stockholders. The consolidation had been approved on September 20th by the state public service commission and on October 4th by the Securities and Exchange Commission.

Action of the stockholders eliminated BN&E, the holding company, and consolidated the subsidiaries, Buffalo, Niagara Electric Corporation, Niagara, Lockport & Ontario Power Company, and Lockport & Newfane Power & Water Supply Company, into a new operating company to be known as the Buffalo, Niagara Electric Corporation. The Niagara Falls Power Company and the Hydraulic Race Company will be direct subsidiaries of the new corporation.

Edison Rates Cut

A REDUCTION in electric rates, which will cut customers' bills \$2,560,000 annually, became effective November 5th, it was announced early this month when Consolidated Edison Company of New York filed a new rate schedule for the residential and religious service classifications. This is part of a total reduction of more than \$6,000,000 annually which the company proposes to make in connection with the merger of Brooklyn Edison Company and New York & Queens Electric Light & Power Company into Consolidated Edison.

Under the new rate schedule all customers being served under the residential and religious rates will receive reductions in their bills. The new rate, which is on the step-down principle, provides that the first 20 kilowatt hours or less will cost \$1.50 on a bimonthly basis. The next 80 kilowatt hours on a bimonthly basis will cost 5 cents a kilowatt hour; the next 80, 4 cents; and the next 70, 3 cents; with all over 250 kilowatt hours on a bimonthly basis at 2 cents a kilowatt hour.

Oklahoma

Oklahoma Railway Sold

THE Oklahoma Railway Company, including almost all of Oklahoma City's local transportation facilities, was sold last month to Eugene Jordan, president of the Jordan Petroleum Company, his wife, Julia Jordan, and Robert S. Bowers, president of the Oklahoma

Transportation Company. The transaction involved approximately \$2,500,000.

The sale was made October 24th when the three completed purchase of all shares of the company's common stock in this country at a cost in excess of \$1,000,000.

In addition, the company will be taken out of its 6-year receivership, with hearing set in

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Federal court on November 5th. The three associates will supply about \$1,300,000 to pay off all existing indebtedness of the transportation company.

The sale was said to continue the "locally owned" tradition of the company, but would be the first time since its inception in Feb-

ruary, 1903, that the common stock had been held by such a small group.

The Oklahoma Railway Company will undergo a complete modernization under the new owners, Jordan promised. Streetcars will be eliminated and all tracks in the city will be removed as soon as possible.

Oregon

Rate Reductions Sought

PROPOSED new rates for electric range and water-heater users which will save them about \$500,000 a year were filed on October 30th with George Flagg, state public utilities commissioner at Salem, by the Portland General Electric Company and the Northwestern Electric Company with the request that the schedules be approved.

The new rates are intended to encourage the use of electric ranges and water heaters, but company officials said from 15 to 20 per cent of the present customers may take the new rate, which is optional, and make the saving. The total saving is estimated on the basis that all of the present customers convert to the new rate.

Portland General Electric proposed to apply the new rate to its Oregon territory, which includes seven counties, and Northwestern also planned to file similar rates in Washington for its territory there.

Under the new schedules, there will be a saving of 20.4 per cent to the users of the first 300 kilowatt hours or less, while for the average user of 500 kilowatt hours a month the reduction would be 19.1 per cent. Most range and water-heater users consume around 500 kilowatt hours a month, it was said.

The new schedules also remove the limit on house heating, but provide a stand-by charge because electric heating of homes is still in an experimental stage, it was said, and the companies are not sure of the load.

The rates would become effective with the December billing period which starts November 23rd.

PUD Setup Sound

THE state hydroelectric commission indicated recently that the proposed Lebanon People's Utility District is financially sound. The commission said that if the PUD took over the electric and water systems for the city of Lebanon and its immediately adjacent territory, the district would be able to buy or build a water and electric system worth \$692,000. But the state tax commission said the existing systems are worth only \$335,890.

The commission said that the total annual revenue of the two systems, owned by the Mountain States Power Company, is \$162,900, while total annual operating expenses are \$114,000. This would leave \$51,500 a year available to pay for the existing system or build a new one. This amount would pay, with interest, for a plant worth twice as much as the existing system.

Pennsylvania

Turns Down Rate Plea

THE state public utility commission on November 2nd announced that it had denied finally the request of the Equitable Gas Company of Pittsburgh for permission to increase rates to 185,000 consumers. Most of the consumers are in Allegheny county. The company also operates in portions of Armstrong, Greene, Washington, and Westmoreland counties.

The rate increase would have cost these consumers approximately \$1,400,000 a year, according to the company's estimates.

The commission issued a temporary order on July 10, 1945, denying the increase. Both the company and the city of Pittsburgh filed exceptions.

The city at that time concurred in the commission's action denying the increase but ob-

jected to certain findings which it considered "may be prejudicial to the city and other consumers and contrary to the public interest" at some future time.

In dismissing the city's exceptions, the commission cited superior court opinions to the effect that commission orders fixing rates do not close the door to further proceedings and that, therefore, the city "cannot be prejudiced" by the order.

PUC Approves Proposal

Two securities certificates of the Pennsylvania Power & Light Company, operating in Harrisburg and in other eastern counties, were registered last month by the state public utility commission. It has also approved an arrangement between the utility and its affiliates, the National Power & Light Company

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and the Electric Bond and Share Company, involving the sale by PP&L of shares of its common stock. The transactions are part of a plan for the rearrangement of the capital structure of the PP&L. Another part of the plan, the refunding of the company's bonds, debentures, and serial notes, was approved by the commission last September.

One of the certificates covers the issuance by the company of 440,000 shares at a total par value of \$44,000,000, of new preferred stock to be exchanged, share by share, for a like number of shares of outstanding preferred stock, of which there are 604,390. The other certificate covers the remaining 164,390 shares of the old preferred stock.

Washington

FPC Dissolves Stay

THE Federal Power Commission on November 2nd dissolved a stay of certain requirements of its order of October 27, 1942, which determined the actual legitimate original cost and prescribed accounting for the Pacific Power & Light Company's Ariel hydroelectric development (Project No. 935) on the Lewis river in Washington, and directed the licensee to comply within sixty days with the accounting disposition specified in the order of October, 1942, to the extent that it has not already done so. The October, 1942, order directed the company, among other things, to remove from the project's accounts \$354,784 representing associated company charges and fees of Electric Bond and Share Company and Phoenix Utility Company, the disposition to be effected by a charge to earned surplus.

The recent order stated that "Licensee has not shown good cause why the provisions of the commission's order of October 27, 1942, relating to the \$354,784.33 should not be made effective and enforced." The order pointed out that on December 7, 1943, the United States Circuit Court of Appeals for the Third Circuit affirmed the commission's order, concerning the Wallenpaupack development, Project

No. 487 (Pennsylvania Power & Light Company), and certiorari was denied by the United States Supreme Court, which is parallel in many respects.

Street-lighting Rates Cut

DRASTICALLY reducing the electric rates governing overhead street and ornamental curb lighting in towns served by the Washington Water Power Company, a new rate schedule was to be filed in Olympia November 1st with the department of public service, it was announced recently by J. E. E. Royer, vice president and general manager.

The new schedule will make possible the modernization of Spokane's residential street-lighting system and will provide material lighting advantages.

New Trial Denied

FEDERAL Judge Ben Harrison last month denied a motion for a new trial presented by the Portland General Electric Company, respondent in condemnation proceedings heard at Tacoma recently, in which the Clark County Public Utility District No. 1 sought acquisition of properties in and near Vancouver.

Wisconsin

Interveners' Petitions Denied

THE Federal Power Commission early this month denied petitions filed by the interveners for rehearing and reconsideration of the commission's order and opinion of September 7, 1945, which enables Wisconsin Southern Gas Company to serve its customers in southeastern Wisconsin with natural gas. "No new facts have been presented or alleged in the interveners' petitions which would justify a revision of the commission's order and opinion, and no principles of law are stated in the petitions which were not fully considered by the commission before it entered such order and opinion," the order denying the petitions stated.

Those requesting rehearing included Wis-

consin Railroad Association, Baltimore & Ohio Railroad Company, Wisconsin Coal Bureau, Inc., National Coal Association, and United Mine Workers of America.

The September, 1945, order (1) directed Natural Gas Pipeline Company of America to extend its transportation facilities to establish connection with those of Wisconsin Southern Gas Company at the Illinois-Wisconsin state line near Genoa City, Wisconsin, and to sell natural gas to the latter company for distribution to its customers in southeastern Wisconsin, and (2) authorized Wisconsin Southern to construct and operate a 44-inch transmission main extending northward from this connection for 50,000 feet to the company's existing facilities at Lake Geneva, Wisconsin, with necessary appurtenances.



The Latest Utility Rulings

Telephone Extension Cannot Be Required Beyond Undertaking to Serve

THE Wisconsin commission rescinded its order in *Klinger v. Wisconsin Telephone Co.* 2-U-2038, requiring an extension of service, after a rehearing and the introduction of evidence showing that the company had never rendered service in the town where the applicants lived. Whether the commission shall require service in an unincorporated area, it was said, must depend upon whether there is a legal obligation to serve. The commission cannot create that legal obligation.

Any such obligation must rest primarily upon a voluntary undertaking of the utility whose service is desired. If that undertaking does not include the requested service, the utility cannot be required to furnish it, no matter how much it might be said to be required by public convenience and necessity.

Although the commission in the past had required various utilities to furnish service when required by public convenience and necessity, orders to that effect had been made prior to the decision of the state supreme court in *South Shore Utility Co. v. Railroad Commission*, 207

Wis 95, PUR1932B 465, 240 NW 784, in which it was held that towns were without power to grant the kind of license, permit, or franchise which constitutes an indeterminate permit. Previous to that decision it was assumed that telephone utilities were operating in the towns under indeterminate permits, and upon that premise it was concluded that the obligation was coextensive with the boundaries of the town. That position, said the commission, was obviously no more sound than the premise upon which it rested.

The commission recognized no validity in a contention by another company that the applicants for service were within its territory. Telephone utilities, said the commission, could not enter into agreements having legal force and effect dividing territory. Nevertheless, since the evidence was clear and conclusive that the Wisconsin Telephone Company had never rendered service in the town, the commission concluded that the prior order must be rescinded and the complaint dismissed. *Klinger et al. v. Wisconsin Telephone Co.* (2-U-2038).



Amortization of Plant Acquisition Adjustments As Revenue or Income Deduction

THE Alabama Power Company was authorized by the Alabama commission to dispose of the balance in Account 100.5, Electric Plant Acquisition Adjustments, by making monthly charges to Account 505, Amortization of Electric Plant Acquisition Adjustments. This was subject to a provision that this treatment should not be construed as decisive of or presumptive of

the treatment to be accorded these charges in rate or other proceedings.

The company had presented evidence that the amounts reflected in Account 100.5 represented actual cash or cash equivalent paid in arm's-length transactions throughout the history of the company for properties acquired as operating units or systems. Acquisitions had been made in the course of and as a necessary

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part of its program to provide an integrated electric system.

The commission did not consider it necessary to decide at the time the question whether current charges to revenue for amortization of amounts recorded in this account should be considered for regulatory purposes as in the nature of an operating revenue deduction or as an income deduction. The commission said:

Inasmuch as the conditions or terms are not clearly prescribed under which Income Deductions Account 537 should be used in-

stead of Operating Revenue Deductions Account 505, and inasmuch as either of such accounts may by its terms be used to reflect the substance of the transaction as a segregation of revenue for the amortization or retirement of invested capital recorded in Account 100.5, our order will permit that monthly charges for such amortization may be recorded by the company in Account 505 without now deciding whether such charges are under the facts of this case in the nature of operating revenue deductions or income deductions.

Re Alabama Power Co. (Docket No. 9437).



Rate Increase Denied When Return on All Properties Is Adequate

AN application of the Hope Natural Gas Company for authority to increase rates to customers in the communities of Parkersburg, Williamstown, and St. Marys using in excess of 2,000,000 cubic feet of gas per month, and in the case of all such consumers in all other territory using in excess of 6,000,000 cubic feet per month, was denied by the West Virginia commission. The commission was of the opinion that no useful purpose would be served by reviewing the evidence in detail.

It was not shown, nor was it contended, that the revenue realized from intrastate operations was not sufficient to pay necessary operating expenses, including taxes and depreciation, and a reasonable return

on property used and useful in such operations.

The state commission said that if the revenue was sufficient for these purposes, it followed that if the revenue from one segment of the business was insufficient, the revenue from another was excessive. If rates for one should be increased, rates for the other should be reduced, which could not be done in the instant proceeding.

The application was dismissed without prejudice to an application for authority to make such adjustments in rates for intrastate domestic, commercial, and industrial service as the facts might warrant. *Re Hope Natural Gas Co. (Case No. 2968).*



Expensed Property and Unused Plant Excluded from Rate Base of Gas Utility

THE Pennsylvania commission, in determining the reasonableness of gas rates, considered, among other things, the claims of the company for gas manufacturing equipment which had been out of use for several years and property the cost of which had been treated as an operating expense. Both of these items were excluded by the commission.

The unused equipment consisted of a relief holder, water gas sets, coal, coke,

and ash equipment, purification equipment, other production equipment, and pumping station equipment. The company based its claim on the fact that there had been increasing difficulty in securing a sufficient natural gas supply. The commission noted, however, that the manufacturing gas plant had not been used for approximately fourteen years and was not in operating condition. It was estimated that a large expenditure would

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be necessary to place the plant in condition. Moreover, a contract with another company had been executed under which substantial gas deliveries were assured for many years.

With respect to expensed property the commission said that this was simply a plea for permission to charge customers a return on property which the customers had previously paid for, dollar for dollar, through operating expenses in the installation years. The company had elected to treat well-drilling cost and related expenses prior to 1920 as operating expense. It was not proper now to rein-

state such items as fixed capital to be included in the rate base.

The commission allowed a return of 6½ per cent because of the greater risk in the natural gas process; excluded depreciation on unused plant; disallowed depletion on the undepleted balance of expensed property which had been excluded; and excluded taxes assumed on interest payments. Allowance was, however, made for amortization of the loss on property not used and useful. *Pennsylvania Public Utility Commission v. North Penn Gas Co. et al.* (Complaint Docket Nos. 14025, 14026).



Combining Evidence in Proceedings to Obtain Operating Authority

TESTIMONY to prove public necessity is not static, says the Pennsylvania commission, in denying a motion by an applicant for operating authority to incorporate into the record the evidence taken in another proceeding. Testimony is susceptible to the influence of changing economic conditions and the temporal element, as well as bias or prejudice, for or against, one or the other of the applicants for operating authority. The commission added:

Notwithstanding the inequality resultant from permitting one of two adverse parties to rest affirmatively upon the efforts and expense of the other, testimony taken for the purpose of one proceeding is prone to becoming stale or inapplicable to another.

Counsel for an applicant for authority

to engage in additional transportation as a common carrier had sought to incorporate testimony taken in an application by another carrier, which was objecting to the present application.

The state public utility commission found that, although there was substantial identity of parties of record, that factor was not absolute. The commission also found that the routes over which each applicant desired to transport persons were not identical, and the testimony of most of the necessity witnesses appearing on behalf of the opposing company applied to that portion of the latter's route which was divergent from the proposed route. *Re Potomac Motor Lines, Inc.* (Application Docket No. 55517, Folder 7).



Procedure for Review of Rate Order Held Adequate and a Bar to Injunction

AN action by Staten Island Edison Corporation against the New York commission to enjoin the enforcement of temporary and final rate orders was dismissed by the New York Supreme Court, special term, on a holding that an adequate remedy at law existed by way of certiorari, under which neither the state

nor Federal constitutional guaranty of due process was denied. The company had taken the position that the rate orders were confiscatory and that it had a constitutional right to the independent judgment of a court as to the law and facts with respect to the issue of confiscation. It asserted that it was without adequate

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remedy at law by certiorari or otherwise.

The generally accepted procedure in the state for the review of rate orders by the commission, said the court, has been by certiorari, and this has been true where the issue of confiscation has been raised. A determination sustaining the company's complaint would wipe out that accepted method of review in any rate case where confiscation was claimed and properly pleaded in a suit in equity and permit a redetermination by the court, in an independent action, of questions of fact which had been decided by the commission.

The court reviewed numerous decisions under New York law in support of the rule that courts should not interfere with commissions or review their determinations further than is necessary to keep them within the law and protect the constitutional rights of regulated corporations. No decision of the United States Supreme Court had been cited holding that a review of the issue of confiscation in a rate case afforded by a

certiorari proceeding under New York law is constitutionally inadequate to satisfy the requirements of due process.

Judicial statements indicating that it had never been settled in New York that certiorari is the exclusive remedy to review a rate order did not amount to an affirmative holding that, as an alternative to certiorari, an action in equity would lie. Moreover, the statements were termed *obiter dicta*. The court concluded:

The legislature provided a statutory method for reviewing the public service commission's determinations by certiorari proceedings under Article 78 of the Civil Practice Act. This has been the method commonly used and generally accepted. To sustain the plaintiff's position here is to circumvent that method and is equivalent to saying that the policy of the courts of this state has been in rate cases, such as the one now before me, to so limit the review accorded in certiorari as to leave open the alternative remedy in equity here claimed. This I cannot hold.

Staten Island Edison Corp. v. Maltbie et al. 57 NY Supp (2d) 515.



Commission Not a Party to Suit on Lease Provision

IN an action by a property owner against a tenant, an electric company, and the California commission to obtain a declaratory judgment, a district court of appeal affirmed a superior court order dropping the commission from the case. A demurrer by the commission on the following grounds was sustained:

- ... (1) the "complaint does not state facts sufficient to constitute a cause of action";
- (2) "The court has no jurisdiction of this defendant, or the subject of the action"; and
- (3) there is a "misjoinder of parties."

The lease of property to the tenant, for laundry purposes, contained a provision permitting the lessee to install an electric meter at his own expense for the purpose of consolidating the current of the Pacific Gas and Electric Company, to be used for the purposes of measuring the current used by the lessee. It further provided that the lessee should have

the full benefit of the saving secured on a consolidated rate for all current used by him.

The commission has rules which, briefly stated, provide that power shall not be supplied to separate premises where the company has adequate service facilities to supply the additional consumer unless such energy is resold at rates identical with the rates of the company that would apply in the event that energy were supplied to the subconsumer directly. The landlord at first had charged the tenant for current supplied at the rate charged by the company to the landlord. By reason of the increased use by the two parties the rate was lower than it would have been for separate billing. Subsequently the landlord notified and demanded of the tenant that he pay the same rates as would be in effect if the electric energy were supplied directly

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by the public utility company to him.

California statutes, it was held, give the supreme court exclusive reviewing jurisdiction, and the superior court did not have jurisdiction over the commission. The provision that the supreme court only should have jurisdiction to review an order of the commission was held to be a valid limitation upon the jurisdiction of the various courts of the state. The court continued:

In the present case appellant seeks to have the superior court declare the railroad com-

mission's rights and duties under the lease and "said rule and regulation." If the declaration of rights develops into issues with which the commission is not directly concerned but which are solely between plaintiff and defendant carrier, then the commission is not an essential or necessary party. If plaintiff seeks to restrain the commission in the performance of its official duties, or desires that the order approved by the commission should be annulled or modified, the proceeding has not been instituted in the proper tribunal.

Independent Laundry v. Railroad Commission, 161 P(2d) 827.



Other Important Rulings

THE Colorado commission held that additional motor carrier competition should not be authorized where existing service is adequate, or can be made adequate. *Re Miller (Application No. 7040 et al. Decision No. 24879)*.

The Missouri commission held that it has jurisdiction to approve less than standard tariff structures originally constructed over railroad tracks without authority. *Re Kansas City Terminal R. Co. (Case No. 10,623)*.

The Arizona commission, in approving a settlement of complaints against water service involving additional construction, ruled that all consumers being served by the utility should bear the expense of the improvement since it was in fact a community improvement. *Re Heywood (Docket No. 9719-E-987, Decision No. 15787)*.

The Colorado commission, in holding that a private motor carrier permit should be granted where existing service was inadequate, ruled that the use of other carriers' equipment occasionally by existing carriers need not necessarily be construed to show a need for additional carrier service, but when such use extends over a period of eight or ten months it would appear that additional service

will not impair the efficiency of existing service. *Re Toler (Application No. 6777-PP, Decision No. 24721)*.

The Alabama commission approved the elimination of a discount for prompt payment of water bills, stating that this was in line with its decision and policy previously adopted concerning prompt payment discount. *Re Greensboro Water Co. (Docket 9397)*.

A Federal court held that it is not only the right but the duty of a carrier to bring an action for undercharges and that conduct, intention, mistake, or misunderstanding are no defense to such an action, and, moreover, that such an action is not barred by the provision of the Interstate Commerce Act relating to immunity of freight forwarders from liability for past acts. *National Carloading Corp. v. Atchison, Topeka & Santa Fe Railway Co.* 150 F(2d) 210.

A party complaining that freight rates are discriminatory, according to the Pennsylvania commission, has the burden of proving by preponderance of evidence the facts necessary to make out a case of undue prejudice and preference. *Whiterock Quarries, Inc. v. Baltimore & Ohio R. Co. (Complaint Docket No. 14020)*.

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports*.

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COMPRISING THE DECISIONS, ORDERS, AND
RECOMMENDATIONS OF COURTS AND COMMISSIONS



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RE BROOKLYN BOROUGH GAS CO.
NEW YORK PUBLIC SERVICE COMMISSION

Re Brooklyn Borough Gas Company

Case 11948
August 8, 1945

PETITION for approval of issuance of first mortgage bonds and preferred stock; granted subject to conditions.

Mortgages, § 5 — Indenture provisions — Protection of bondholders — Depreciation.

1. A mortgage trust indenture, executed in connection with the issuance of bonds, should include provisions to protect investors against possible failure to maintain the property and to build up adequate reserves for accruing depreciation, even in the case of a company having a long record of coöperation with the Commission and respect for sound accounting, p.196.

Mortgages, § 5 — Indenture provisions — Maintenance and replacement fund.

2. Provisions in a mortgage trust indenture, executed in connection with the issuance of bonds, for a maintenance and replacement fund are open to criticism both as to theory and as to practical operation when requiring cash deposits with the trustee computed on a percentage of gross revenue less amounts expended for repairs and maintenance and for gross additions, p.196.

Depreciation, § 39 — Adequacy of reserve — Maintenance.

3. The true test of an adequate depreciation reserve is not the expenditures made for maintenance but the failure to recognize the constantly decreasing amount of remaining service value of the various elements of property due to approaching retirement, p.196.

Depreciation, § 22 — Annual provision — Relationship to revenues.

4. The constantly decreasing amount of remaining service life of various elements of property due to approaching retirement cannot be tested by any percentage of operating revenues, because accruing depreciation is not affected by the amount of revenues except indirectly or in unusual instances, p. 196.

Depreciation, § 23 — Annual provision.

5. A company authorized to issue bonds should be required to set aside a certain amount monthly which, in the opinion of the Commission, is the amount which at present should be provided for a depreciation reserve, subject to being adjusted according to changes in original cost of various classes of depreciable property and the depreciation rate applicable to each, p.196.

Mortgages, § 5 — Indenture provision — Tax assumption.

6. A mortgage trust indenture, executed in connection with the issuance of bonds to be sold at competitive bidding, should not contain provisions for reimbursement of taxes assessed by certain states against certain bondholders, p.198.

Corporations, § 18.1 — Voting power — Arrearages on preferred stock.

7. A provision, in connection with the issuance of nonparticipating pre-

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ferred stock, for election of a majority of the board of directors by preferred stockholders when dividends are in default to the extent of eight full quarterly payments (nonsuccessive) and control of the company until all dividends in arrears have been paid, when control would revert to common stockholders, is much more equitable than a provision for election by preferred stockholders of one less than a majority of the board when dividends are in default equivalent to four full quarterly successive dividends, p. 200.

Security issues, § 5.1 — Redemption price of preferred stock.

8. A provision, in connection with the issuance of preferred stock, for an initial redemption premium of \$3 per share for the first five years and \$5 per share thereafter was required to be substituted for a proposed provision that redemption prices of the stock would vary from \$5 per share over the public offering price if redeemed during the first year after issuance to \$3 per share over the offering price after the fourth year, the higher premiums for the first year being characterized as "window dressing" not favored by the Commission, p. 200.

Security issues, § 113 — Expenses — Financial adviser's fees.

9. The Commission, after adopting and announcing a policy of public competitive bidding for securities, saw no reason why a person associated with one prospective bidder should be paid for advice, p. 201.

Accounting, § 21 — Expense of refinancing — Premiums — Duplicate interest and dividends — Unamortized premium on securities.

10. Items representing premium on bonds, premium on stock, duplicate interest, duplicate dividends, and net unamortized premium on bonds and capital stock expense must be charged off at once when new bonds and preferred stock are issued for the purpose of refunding outstanding bonds and preferred stock, p. 202.

Accounting, § 21 — Financing expense — Bonds.

11. The amount of expenses incurred when bonds are issued may be spread over the life of the bonds, p. 202.

Accounting, § 21 — Financing expense — Preferred stock.

12. The amount of expenses incurred in issuing preferred stock may be carried as a capital stock expense, and no amortization is required by the uniform system of accounts, although companies following a conservative financial program frequently write off the expense connected with stock issues immediately or over a very short period, p. 202.

Security issues, § 112 — Competitive bidding — "Package" bidding.

13. The plan under which a senior security is first offered for bidding and some time is allowed to elapse between the award of such issue and the receipt of bids and the award on a junior issue should be followed in issuing bonds and preferred stock for refunding, instead of receiving bids for senior and junior security issues at the same time; the Commission does not favor "package" bidding, p. 204.

Security issues, § 113 — Expenses of refinancing.

Discussion, in proceeding before New York Commission, of estimates of expenses incurred in refinancing by issuing bonds and stock, p. 201.

RE BROOKLYN BOROUGH GAS CO.

APPEARANCES: Philip Halpern, Counsel (by Martin J. Eagan, Assistant Counsel), for the Public Service Commission; Whitman, Ransom, Coulson & Goetz (by Jacob H. Goetz and William R. Sherwood), New York city, Attorneys, for Brooklyn Borough Gas Company; Ignatius M. Wilkinson, Corporation Counsel (by Harry Hertzoff, Assistant Corporation Counsel and W. G. Read, Engineer), New York city, for the city of New York.

MALTBIE, Chairman: By petition filed with this Commission on April 23, 1945, the Brooklyn Borough Gas Company requested authority under § 69 of the Public Service Law:

1. To issue \$3,640,000 aggregate principal amount of first mortgage bonds to bear interest at a rate not to exceed 3 per cent per annum to be dated as of May 1, 1945, and to mature May 1, 1970.

2. To issue \$500,000 aggregate principal amount of serial notes to bear interest from $1\frac{1}{2}$ per cent to $2\frac{1}{2}$ per cent per annum and to mature in from one to seven years.

3. To issue \$1,000,000 par value of cumulative preferred stock with a dividend rate of 4 per cent per annum.

4. To file an amendment to petitioner's certificate of incorporation authorizing an increase in the number of shares of stock and reclassifying shares so as to permit the issuance of the proposed 4 per cent cumulative preferred stock.

Subsequently, the company filed a supplementary petition dated June 23, 1945, asking for:

"(a) an order authorizing and consenting to the issuance by Brooklyn

Borough Gas Company of \$3,640,000 aggregate principal amount of first mortgage bonds to be dated as of August 1, 1945, and to mature August 1, 1970, to bear interest at such rate and to be sold at such price as may be fixed as a result of competitive bidding, subject to acceptance of such bid by Brooklyn Borough Gas Company and approval thereof by the Commission;

"(b) an order authorizing and consenting to the issuance by Brooklyn Borough Gas Company of \$1,500,000 par value of cumulative preferred stock, such stock to have such dividend rate and to be sold at such price as may be fixed as a result of competitive bidding, subject to acceptance of such bid by Brooklyn Borough Gas Company and approval thereof by the Commission; and

"(c) an order authorizing and consenting to the filing of an amendment to petitioner's Certificate of Incorporation pursuant to § 36 of the Stock Corporation Law increasing the number of shares which petitioner is authorized to have by 20,000 shares of \$100 par value cumulative preferred stock to be issued in series; . . ."

The proceeds from the issuance of these securities are to be used for:

- (a) The redemption of \$3,640,000 outstanding principal amount of the company's first mortgage bonds, 4 per cent series due 1965, at 104 per cent of par plus accrued interest.

- (b) The redemption of 30,000 shares outstanding of 6 per cent cumulative participating preferred stock, \$50 par value, aggregate amount \$1,500,000, at 105 per cent of par plus accumulated dividends.

Additional necessary funds are to

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be provided from the company's treasury.

The Brooklyn Borough Gas Company was incorporated in 1898 under the Transportation Corporations Law of New York State. Since that time, it has been engaged in the business of furnishing gas service to consumers in the 31st ward of the borough of Brooklyn, city of New York. The company's history has been reviewed recently by the Commission in Case 11315 (see memorandum approved November 2, 1944), 56 PUR(NS) 1.

The proposed issue of bonds is to be secured by a second supplemental indenture dated August 1, 1945, supplemental to the mortgage trust indenture dated September 1, 1939. The latter was executed by the company in connection with the issuance of the bonds herein sought to be refunded (Case 9994).

The principal features of the second supplemental indenture are:

1. Certain changes and amendments made to qualify the indenture under the Federal Trust Indenture Act of 1939 since the bonds are to be offered through public letting.

2. Creation of a new series of bonds designated "first mortgage bonds, . . . per cent series due 1970" limited to aggregate principal amount of \$3,640,000, to be dated August 1, 1945, and to mature August 1, 1970.

3. Covenant by the company to reimburse owners of the bonds for certain specified taxes.

4. Redemption of the new bonds at any time on not less than thirty days' notice at prices to be determined after public offering according to a plan outlined.

5. Provision for a sinking fund and

a maintenance and replacement fund.

6. Restriction of payment of dividends (except stock dividends) to earned surplus accumulated subsequent to January 1, 1945.

Funds

The sinking-fund provisions of the indenture require the company to turn over to the trustee on December 20th of each year beginning with 1946 an amount equivalent to the redemption price of bonds of the series of 1970 that are to be retired, increasing from the initial requirement of \$20,000 to the final payment on December 20, 1969, of \$50,000. The total amount of bonds to be retired through the operation of the sinking fund in twenty-four years is \$910,000 or 25 per cent of the issue. The fund is noncumulative in nature since bonds redeemed thereby are canceled, and there is no compounding of interest.

[1-5] Under the provisions of the maintenance and replacement fund, the company covenants, so long as any of the 1970 series bonds are outstanding, that it will deposit with the trustee within four months after the close of the year 1947 and within four months after the close of each period of three years thereafter an amount in cash, 1970 series bonds or certified net property additions made after August 1, 1945 and not theretofore bonded equal to the excess of 11 per cent of the total gas operating revenues, less the cost of gas purchased, over the expenditures of the company from August 1, 1945, to the end of such 3-year period for repairs and maintenance and gross property additions up to the amount of property retirements.

If the above formula had been oper-

RE BROOKLYN BOROUGH GAS CO.

ative during the year 1944, the amount which the company would have been required to set aside after making the specified expenditures would be computed as follows:

Gross revenues	\$2,885,326
11% of above	317,386
Less: Repairs and maintenance	\$180,417
Gross additions ...	109,910
Required cash deposit	\$27,059

However, during the year 1944, as a result of the insistence of the Commission in prior cases, the company charged \$205,330 to operating expenses for annual depreciation. Thus, if the terms of the indenture alone be considered, the company could have reduced its depreciation accrual by almost \$70,000 (\$205,330-\$136,969), thereby increasing net earnings, income taxes, and surplus earnings available for dividends.

It may be said that the company's long record of coöperation with the Commission and its respect for sound accounting would make such an event improbable. But persons may get control of the company who know not Joseph and recognition must wisely be taken of such a contingency. The Commission would be blind to what has happened in other companies were it to ignore this possibility and to permit bonds to be issued without adequate protection, particularly since the balance sheet accounts of this company have been placed on a sound basis, all doubtful items eliminated, an adequate depreciation reserve created and the annual depreciation charge brought up to a proper amount. If proper amounts were not to be provided for hereafter, the capital of the

company would be as effectually "watered" as though items that represented no values were placed in property accounts or securities issued without consideration. This company has been placed on an even keel twice in thirty years. It should be kept there and the indenture and the order of the Commission should so provide. The proposed indenture is inadequate, notwithstanding the employment by the company of a financial adviser. If indentures are to include provisions to protect investors against possible failures to maintain the property and to build up adequate reserves for accruing depreciation, they should be built on a sound basis and should be effective.

The provisions of the "maintenance and replacement fund" are open to criticism both as to theory and as to practical operation. There are no facts in the record in this case which indicate that 11 per cent of the total gas operating revenues, less cost of gas purchased, is an adequate measure of the amount which should be spent for repairs and maintenance and to adequately provide for a depreciation reserve. It is the duty of every corporation to maintain its property in first-class operating condition, and failure to do so will naturally accelerate the rate at which depreciation accrues. But experience has definitely shown that companies seldom fail to maintain their property, whereas they frequently fail to provide adequate depreciation. Consequently, the true test of an adequate depreciation reserve is not the expenditures made for maintenance but the failure to recognize the constantly decreasing amount of remaining service value of the various ele-

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ments of property due to the approaching retirement. This cannot be tested by any percentage of operating revenues because accruing depreciation is not affected by the amount of revenues except indirectly or in unusual instances.

The plan proposed in the indenture is, in our opinion, quite unsatisfactory, not only from the standpoint of its theory but because of the probability that it will not work effectively in practice and is more likely to result in funds remaining idle and unused which ought to be used productively, and because a hard and fast rule is applied for a 25-year period when conditions are likely to change and require adjustments.

In the decision in Case 11929, Re Kings County Lighting Co. for authority to issue \$4,200,000 principal amount first mortgage bonds—the Commission adopted a resolution authorizing the company to invite bids at public letting in which provision was made for the setting aside of a certain amount monthly, which, in our opinion, was the amount which at present should be provided for a depreciation reserve, subject to being adjusted according to the changes in the original cost of various classes of depreciable property and the depreciation rate applicable to each. This plan should be followed in this case and the resolutions herewith submitted so provide. As stated in the memorandum in that case, adopted July 26, 1945, the sum provided for in the resolution and the order authorizing the final issuance of securities should be subject to readjustment as future conditions require.

Taxes Assumed

[6] The assumption by the company of certain taxes levied or to be levied against holders of the bonds requires comment. The indenture provides that the company will reimburse any bondholder that is an insurance company for any franchise or insurance company tax, up to 2 per cent per annum on interest received, assessed by the state of Connecticut against such bondholders; and will also reimburse any bondholder for any personal property tax, up to four mills per annum on each dollar of taxable value of the bonds (up to the principal amount), assessed by the commonwealth of Pennsylvania and/or any political subdivision thereof.

It is difficult to understand the motives or justification of such a provision, particularly when the bonds are to be offered to the highest bidder at a public letting upon terms that should be fair to all with no favors or preferences. Why should the residents of any state or the purchasers in any class or area be singled out? Further, how would a bid from Connecticut or Pennsylvania or a group representing in part or in whole purchasers in either or both of these states be rated for award against other bidders? How would the company or the Commission fairly determine what bid was the most advantageous to the company? The provision should be stricken from the indenture.

Redemption Prices

The prices at which the new bonds are to be redeemable upon a voluntary basis will start at 3 per cent of the principal amount over the initial offering price (exclusive of accrued in-

RE BROOKLYN BOROUGH GAS CO.

terest) specified by the successful bidder. This redemption premium is to be scaled down by regular progression on August 1st of each year starting August 1, 1946, to the nearest fraction of $\frac{1}{8}$ until it reaches the principal amount of the bonds in the year beginning August 1, 1969.

The redemption price of bonds redeemed through the operation of the sinking fund or maintenance and replacement fund or in the event the property subject to the lien of the mortgage is taken by eminent domain starts at the initial public offering price (exclusive of accrued interest) and is to be scaled down on August 1st of each year starting August 1, 1946, so as to preserve the yield at the offering price to maturity until it equals the principal amount thereof in the year beginning August 1, 1969. If the bonds are not offered to the public by the successful bidder or bidders, the initial redemption price is to be the bid price scaled down to par at maturity.

Preferred Stock

The company asks authority to create a new series of preferred stock. The certificate of incorporation is to be amended to authorize 20,000 shares of \$100 par value cumulative pre-

ferred stock to be issued in series. The company now asks authority to issue \$1,500,000 par value of such new stock, which will bear a dividend rate and be sold at a price to be fixed as a result of competitive bidding.

The present outstanding preferred stock consists of 30,000 shares of 6 per cent cumulative participating preferred stock of the par value of \$50 each. This series is entitled to 6 per cent cumulative dividends, payable quarterly, before common stock dividends. It is also entitled to additional dividends if and when dividends in excess of \$3 per share are paid on the common stock. Each share is to receive an additional dividend at the rate of $\frac{1}{4}$ per cent per annum (but not exceeding 8 per cent per annum in the aggregate) for each \$3 dividend in excess of \$3 per annum or proportion thereof paid on the common stock.

The call price of this series of preferred stock is 105 per cent of par plus accumulated dividends, provided dividends during the twelve months preceding the redemption date have not exceeded $6\frac{1}{2}$ per cent. The company proposes to redeem this stock on October 1, 1945.

If this proposal is approved, the company's capital stock structure will be:

Class	Shares Authorized	Shares Outstanding	Par or Stated Value Outstanding
% cumulative preferred stock \$100 par value	20,000	15,000	\$1,500,000
Common stock, no par	50,000	40,000	1,000,000
Total	70,000	55,000	\$2,500,000

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The dividends declared and paid on the company's stock for the past five years were:

Year	Common	6% Cum. Part. Pfd.
1940	\$120,000	\$90,000
1941	120,000	90,000
1942	120,000	90,000
1943	60,000	90,000
1944 .....	.....	90,000
Total	\$420,000	\$450,000

[7] The new preferred stock is to be nonparticipating. However, the terms of the new issue originally provided that whenever dividends were in default equivalent to four full quarterly dividends (now successive), the holders of such stock would be entitled to elect one less than a majority of the board of directors.

According to this plan, the preferred stockholders would never be able to elect a majority of the board and the company might fail to pay its preferred stock dividends year after year for many years and still the common stockholders who were responsible for the management of the corporation would control and determine the policies and administration of the corporation.

This is obviously unfair and the Commission has before it a convincing example of the injustice and unwisdom of the plan in a New York company where the dividends in arrears have already amounted to about 60 per cent of the par value of the preferred stock and the common stockholders, who received nearly four times the stated value of their common stock in seven years, are still in control.

In response to criticism of the plan, the company now proposes that when dividends are in default to the extent

of eight full quarterly payments (non-successive), the preferred stockholders will be entitled to elect a majority of the board and thus control the company until all dividends in arrears have been paid, when the control would revert to the common stockholders. This plan is much more equitable than the original suggestion.

[8] It is proposed that the redemption prices of the new preferred stock are to vary from \$5 per share over the public offering price if redeemed during the first year after issuance to \$3 per share over the offering price after the fourth year. Mr. Lindsley, financial adviser to the company, characterized the high premiums for the first few years as "window dressing."

The Commission does not favor "window dressing" and there seems to be no reason why a 3-point call price should be adopted as a reasonable standard for the initial redemption of bonds and a 5-point spread in the case of preferred stock. In the case of the preferred stock issued by the New York Power and Light Corporation, which sold on such a favorable basis to the company, the Commission approved an initial premium of \$3 per share for the first five years and \$2 per share thereafter. There is no reason why this standard should not apply to this case and the certificate submitted by the company should be amended accordingly.

Refinancing Costs

The redemption of the presently outstanding bonds involves the payment by the company of a 4 per cent premium amounting to \$145,600. Redemption of the 6 per cent cumulative participating preferred stock re-

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quires payment of a 5 per cent premium amounting to \$75,000.

The management feels it is desirable that funds for the redemption of the bonds be on deposit with the trustee before calling the issue. Miss Dillon, president of the company, testified that in her opinion, to borrow the necessary funds from a bank on a short-term loan might jeopardize the company's bargaining position due to the many uncertainties attending an operation of this nature. Assuming a 3 per cent interest rate on the new issue, the duplicate interest charge for a 30-day call period would be \$9,100.

The company also proposes to issue new preferred stock before the old preferred stock is retired with the result that for a period the company will be paying dividends on two stock issues.

According to the time schedule submitted, this period will be approximately one week producing duplicate interest at 4 per cent or about \$1,250.

Further, the company is so reluctant to take even the slightest chance that it proposes to arrange a standby agreement with banks for which an additional charge will probably be made. The amount of this charge is not indicated in the record.

The registration statements contain estimates of expenses of the contemplated financing. The total of the items listed for bonds and stock is \$72,293, but some of the items refer to the securities to be refunded. No allowance for the costs and expenses of the Commission's staff for this proceeding is included. The items submitted by the company are:

	Bonds	Stock	Total
1. P.S.C. filing fee for approval of bonds and preferred stock	\$648	\$266	\$914
2. P.S.C. filing fee for approval of amendment to certificate of incorporation .....	..	10	10
3. Mortgage recording tax	18,200	..	18,200
4. SEC filing fees	382	158	540
5. Federal stamp tax	4,004	..	4,004
6. Trustee's fees (including counsel fees) for redemption of old bonds and handling of new bonds	4,275*	..	4,275*
7. Registrar's and transfer agent's fees on redemption of old and issuance of new preferred stock .....	..	1,650*	1,650*
8. Federal stamp tax .....	..	1,650	1,650
9. Original issue tax (New York) .....	..	1,000	1,000
10. Financial adviser's fees	1,770	730	2,500
11. Legal services for petitioner	5,400	3,600	9,000*
12. Accounting services	1,050	450	1,500*
13. Printing and engraving expenses	12,000	8,000	20,000*
14. Miscellaneous	4,271	2,779	7,050*
Total	\$52,000	\$20,293	\$72,293

* Estimated.

Items 1 to 5 and 8 and 9 are determined by law. Items 6 and 7 must be allocated between the old and new securities before approval by the Commission.

[9] With regard to item 10, Miss Dillon testified that no official of the company has had any experience with

public competitive bidding. It was therefore felt that the management should have the advice of a firm specializing in this type of work. The Commission has adopted a policy of public, competitive bidding. It was announced before this case arose. There seems to be no reason why a

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person associated with one prospective bidder should be paid for advice. The possibilities under such a practice are too obvious.

Item 11, legal services for petitioners, appears to be large for an issue of this size. However, the Commission will reserve decision.

Item 12 represents the cost of independent accounting service.

Item 13 is exceptionally heavy for issues of this size but registration statements, prospectuses, and other documents relating to each issue must be printed for distribution to bidders and others under the requirements of the Securities and Exchange Commission.

As required by the uniform system of accounts now in effect, the company proposes to transfer to surplus the unamortized premium on the old bonds of \$57,542 and to write off against surplus \$40,232 of unamortized debt discount and expense applicable thereto. When the outstanding preferred stock is redeemed, it will be necessary to charge to surplus \$33,588 representing capital stock expense applicable to this stock. The net of these items is \$16,278.

[10-12] Summarizing the cost above stated and accepting for the moment the estimate of \$72,300 of expenses used in the preparation of the company's exhibits, we have:

Cash expenditures

Expenses	\$72,300
Premium on bonds	145,600
Premium on stock	75,000
Duplicate interest	9,100
Duplicate dividends	1,250

\$303,250

Write-off

Net unamortized premium on bonds and capital stock expense	16,278
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\$319,528

Each of these items must be charged off at once except the expenses finally approved by the Commission for which estimates have been made amounting to \$72,300. The amount finally determined to be applicable to the bonds may be spread over the life of the bonds. The amount applicable to the stock may be carried as a capital stock expense and no amortization is required by the uniform system of accounts. However, companies that follow a conservative financial program frequently write off the expense connected with stock issues immediately or over a very short period. That policy might wisely be followed in this instance.

To show the approximate effect of the refinancing on the company's income, a condensed pro forma income statement for the year ended May 31, 1945, was submitted. This assumes the new financing was all applicable to that year. Net interest and amortization charges for the period were \$144,985 as against the comparable figure of \$112,200. The latter figure assumes an annual amortization of all expenses of \$3,000, which is excessive upon the basis of \$52,000 spread over a 25-year life of the bonds.

Offsetting, the indicated saving of \$32,785, there will be an increase in Federal income taxes estimated by the company at \$13,000 (about 40 per cent of the saving), leaving a net gain in income available for stock dividends and other corporate purposes of about \$20,000.

Dividend requirements on the new series of preferred stock are estimated at 4 per cent, reducing this item from \$90,000 to \$60,000. This would leave,

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according to the pro forma statement of income, nearly \$232,000 for common stock dividends and other requirements.

Condensed Income Statement

	Twelve Months Ended May 31, 1945 Per Books	Pro Forma
Operating Revenues (a)	\$2,966,591.26	\$2,966,591.26
Operation and Maintenance	\$1,767,984.25	\$1,767,984.25
Depreciation	205,546.74	205,546.74
Operating Taxes	362,235.99	362,235.88
Total Operating Revenue Deductions	\$2,335,766.87	\$2,335,766.87
Net Operating Revenue	\$630,824.39	\$630,824.39
Other Income	1,948.07	1,948.07
Gross Income	\$632,772.46	\$632,772.46
Interest on First Mortgage Bonds	\$145,866.66	\$109,200.00
Amortization of Bond Premium & Expense—net	881.80 R	3,000.00
Other Income Deductions	43,219.46	43,219.46
Total Income Deductions, exclusive of Federal Income Taxes	\$188,204.32	\$155,419.46
Net Income, before Federal Income Taxes	\$444,568.14	\$477,353.00
Federal Income Taxes—estimated	172,500.00	185,500.00 (b)
Net Income after Federal Income Taxes	\$272,068.14	\$291,853.00
Dividend requirements on Preferred Stock—Annual basis	90,000.00	60,000.00 (c)
Net Income available for dividends on Common Stock and Other Corporate Purposes	\$182,068.14	\$231,853.00

- Notes: (a) Includes revenue resulting from temporary increase in gas rates of 3¢ per M cu. ft. for period Dec. 1, 1944, to May 31, 1945, amounting to approximately \$52,000.
 (b) Exclusive of adjustments on account of expenses in connection with redemption of 4% bonds.
 (c) Taken at 4%, subject to variation of \$1,500,000 for each 0.1% variation in dividend rate.

R=Red Figure.

The sinking-fund requirements under the indenture will be \$20,000 per year for the first three years, the initial payment coming due on December 20, 1946. There would remain, then, after reserving this amount from income, about \$212,000 available for credits to surplus, common stock dividends and other purposes on the basis of the pro forma income statement.

Conclusions

It has been unnecessary to discuss

many subjects which would have received attention had it not been that the accounts and finances of this company have been reviewed in other proceedings, that all of the adjustments recommended by the Commission from time to time have been promptly adopted, that the property accounts are all on an original cost basis, that the company has adequate depreciation reserves for which it is providing through operating charges ample provision monthly and that from the point

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of view of earnings the company is being successfully operated.

Certain criticisms have been made of the pending proposal and certain changes are required herein. These may necessitate amendments of the papers submitted including the indenture, for it must be made to conform to the resolution authorizing the company to invite bids at a public letting, and certain documents have yet to be submitted before the Commission may officially act.

[13] The Commission has not been in favor of "package" bidding, that is, the receipt of bids for senior and junior security issues at the same time. There seems to be no reason why an exception should be made in this instance. It is desirable that everything should be done to enlarge the field of possible bidders and it is known that there are certain financial interests that do not think it wise to hold senior and junior securities in the same corporation. Further, the experience of the Commission shows that the plan under which a senior security is first offered for bidding and some time is allowed to elapse between the award of such issue and the receipt of bids and the award on a junior issue has so far been very successful and should be followed in this instance.

According to the time schedule submitted, the company proposes to advertise for bids on the proposed bond issue upon Monday, August 27, 1945, assuming that the Commission adopts a resolution authorizing it so to do before August 10, 1945. Bids are to be opened upon Wednesday, September 5th, which means that only nine days will elapse between the invitation and the opening of bids. This period

is short and the interval includes a Saturday, a Sunday, and a holiday—Labor Day. The company has fixed this period notwithstanding the fact that there is much doubt as to whether it is favorable to the marketing of bonds upon the most advantageous terms to the company. The resolution submitted herewith authorizing the company to invite bids does not require that this time schedule be adhered to, and responsibility for selecting the best period must rest upon the company.

The company also proposes to advertise for bids on the preferred stock upon September 10th and to allow only seven days between such advertisement and the opening of bids. This period is shorter than usual. There seems to be no apparent reason why it should be so short. Further, the bonds are to be offered to the public on September 7th—a Friday—and bids are to be invited on the preferred stock upon the following Monday—another short interval. The resolutions submitted herewith will not permit this program to be carried out for obvious reasons.

Following the practice adopted in the resolution relating to the recent issue of the Kings County Lighting Company bonds, the bond resolution requires the company to make adequate provision for accruing depreciation. In Case 10131, decided in May, 1941, the Commission fixed the annual depreciation rates on each class of gas property of the Brooklyn Borough Gas Company and in Case 9994, as a condition to the issuance of securities, required the company to create a reserve on the basis of such rates. The provision seems to have

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worked satisfactorily over a period of four years and the same clause is incorporated in this case.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Benjamin H. Davis et al.

v.

Cheltenham & Abington
Sewerage Company

Complaint Docket No. 10967

November 13, 1944

COMPLAINT to obtain refunds to patrons after termination of rate proceeding; hearing ordered and scope of proceeding limited. See also post, p. 207.

Reparation, § 48 — Complainants.

1. The technical standing of complainants to conduct a proceeding to obtain refunds for patrons after termination of a rate proceeding is immaterial since, under § 313 of the Public Utility Law, the Commission is required to award refunds for and on behalf of all patrons, and, if necessary, would institute a proceeding on its own motion to that end, p. 206.

Reparation, § 43.1 — Scope of proceeding — Validity of assignment of interest by patron.

2. The Commission, in determining the patrons entitled to refunds and the amount of refunds after the termination of a rate proceeding, is not required to pass upon the legal validity of any assignment of interest by a patron, since this is a matter of contract law for the courts, and the Commission's function will be performed when it directs the payment to patrons of such refunds as are found to be due and to patrons entitled thereto according to the records of the utility company, p. 206.

By the COMMISSION: During the ten years this proceeding has been before the Commission, pleadings and counter-pleadings have tended to delay the proceeding and obscure the essential issue which is the amount of reparations due consumers of respondent. The reparation or refund period

has been authoritatively determined by the Pennsylvania supreme court in *Cheltenham & A. Sewerage Co. v. Public Utility Commission* (1942) 344 Pa 366, 43 PUR(NS) 477, 25 A (2d) 334, as beginning August 30, 1935, and ending January 1, 1937, and the sole matters remaining for

PENNSYLVANIA PUBLIC UTILITY COMMISSION

our determination are the patrons entitled to refunds and the amounts of such refunds. For the purpose of ascertaining these matters the Commission bureau of accounts was directed to make an examination of the books and records of respondent, and a report of the results of this examination has been submitted, giving the names of the patrons entitled to reparation and the amounts to which they are respectively entitled under the cited decision of the supreme court.

[1, 2] Respondent has questioned the status of certain complainants and has disputed the validity of various assignments of interest by various patrons. As we view the case, the technical standing of the complainants to conduct the proceeding is immaterial since, under § 313 of the Public Utility Law, we are required to award refunds for and on behalf of all patrons, and, if necessary, would institute a proceeding on our own motion to that end. Similarly, we do not deem it necessary to pass upon the legal validity of any assignment of interest by a patron. This is a matter of contract law for the courts. Our function will be performed when we direct the payment to patrons of such refunds as are found to be due. We do not have the duty to examine the circumstances of each patron to determine whether or not some other entity is legally en-

titled to receive the refund due by reason of the patron's overpayment. We will direct the payment of refunds to the patrons entitled thereto according to the records of respondent, and respondent will comply with our order if payment is made to such patrons.

For the purpose of completing the record in this proceeding, a further hearing is necessary, and it should be limited in scope in accordance with the above expressions; therefore,

Now, to wit, November 13, 1944; it is *ordered*:

1. That a hearing be held at 10 A.M., Tuesday, December 5, 1944, in City Hall, Philadelphia.

2. That, at such hearing, the report of the Commission bureau of accounts, dated October 10, 1944, be incorporated in the record.

3. That a copy of the bureau of accounts' report of October 10, 1944, be forthwith forwarded to counsel for complainants and counsel for respondent.

4. That no evidence be received at the hearing which does not relate directly to the factual correctness of the names and amounts set forth in the schedule of reparations shown in the bureau of accounts' report of October 10, 1944.

The Chairman and Commissioner Thorne being absent did not participate in the vote on this order.

DAVIS v. CHELTENHAM & ABINGTON SEWERAGE CO.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Benjamin H. Davis et al.

v.

Cheltenham & Abington
Sewerage Company

Complaint Docket No. 10967
August 6, 1945

PETITIONS for permission to submit proof as to status of complainants in reparation proceeding; dismissed. See also ante, p. 205.

Reparation, § 46 — Evidence as to claimants.

Petitions for the opportunity to offer proof as to the status of specific complainants, in a proceeding to determine reparation awards after completion of a rate proceeding, should be denied where the Commission has ruled that refunds should be made to patrons entitled thereto according to utility company records without examining the circumstances of each patron to determine whether or not some other entity is legally entitled to receive the refunds.

(THORNE, Commissioner, dissents.)

By the COMMISSION: This matter is now before us upon petitions and answers of complainant and respondent. The petition of the respondent seeks opportunity to offer proof that Benjamin H. Davis is not a proper complainant by reason of the fact that at the institution of the complaint and at no time prior to April 13, 1944, was Davis the owner or lessee of any property served by the respondent, and that under tariff regulations of the respondent in force at the time, he could not have been a patron of respondent. The petition of Glenside Home Protective Association, Inc., asks that leave be granted to submit in evidence the original record or minute book of its meetings and meetings of its executive

committee, together with a copy of its charter, bylaws, and amendments thereto.

At the hearing of May 17, 1945, both parties closed their case subject to the Commission's ruling on these petitions.

The petition of respondent questions the status of a specific complainant, and another complainant asks to be permitted to submit what it describes as the best available evidence upon the question of its authority to receive various assignments of interest of various patrons. The same issues were discussed in our order of November 13, 1944, 60 PUR(NS) ante, p. 205, as follows:

"Respondent has questioned the

PENNSYLVANIA PUBLIC UTILITY COMMISSION

status of certain complainants and has disputed the validity of various assignments of interest by various patrons. As we view the case, the technical standing of the complainants to conduct the proceeding is immaterial since, under § 313 of the Public Utility Law, we are required to award refunds for and on behalf of all patrons, and, if necessary, would institute a proceeding on our own motion to that end. Similarly, we do not deem it necessary to pass upon the legal validity of any assignment of interest by a patron. This is a matter of contract law for the courts. Our function will be performed when we direct the payment to patrons of such refunds as are found to be due. We do not have the duty to examine the circumstances of each patron to determine whether or not some other entity is legally entitled to receive the refund due by reason of the patron's overpayment. We will direct the payment of refunds to the patrons entitled thereto according to the records of respondent, and respondent will comply with our order if payment is made to such patrons."

The petitions now before us present nothing inducing a different conclusion. Both petitions will be dismissed; therefore,

It is *ordered*:

1. That the petitions of respondent and the Glenside Home Protective Association, Inc., asking opportunity to present additional evidence, be and are hereby dismissed.

2. That any party desiring to submit a brief in this proceeding shall do so on or before August 22, 1945.

Commissioner Thorne files a dissenting opinion.

THORNE, Commissioner, dissenting: I dissent from the opinion of the majority in the case because I believe that no order is necessary to dismiss this petition, and because the granting of an opportunity to file a brief is only another subterfuge to further delay a decision in the case. The Commission has attempted to be courteous to the parties involved, and their attorneys, and, as a result, this case has been unduly prolonged for nine years.

I believe the case should be decided at once, as I am opposed to any further delay.

LEIGHTON v. NEW YORK TELEPHONE CO.

NEW YORK SUPREME COURT, SPECIAL TERM,
NEW YORK COUNTY

Leon Leighton

v.

New York Telephone Company

184 Misc 827, 55 NY Supp2d 193

May 3, 1945

PROCEEDING to compel telephone company to recapture extension telephones and distribute them among persons without service; motion to dismiss granted.

Courts, § 19 — Conflicting jurisdiction of Commission.

1. Courts should not interfere by summary adjudication or by mandamus in public utility matters highly technical in character, and often far-reaching in their economic consequences, until they have been considered and passed upon by the Commission, p. 210.

Mandamus, § 9 — Equal distribution of telephones — Proceeding before Commission.

2. A proceeding in the nature of mandamus to compel a telephone company to recapture extension telephones in residences of subscribers who have more than one instrument and distribute those extra instruments among applicants for service who have not been accorded service, because of a shortage of instruments, should be dismissed in view of the complicated considerations of fact, policy, and administration involved, which should receive the attention of the Commission in a pending proceeding for the same relief, p. 210.

APPEARANCES: Leon Leighton, of New York city, pro se; Ralph W. Brown, of New York city (Bleakley, Platt & Walker, Frank A. Fritz, and Arthur C. Patterson, all of New York city, of counsel), for respondent.

PECK, J.: This is a motion to dismiss the petition in a proceeding, in the nature of mandamus, to compel respondent, New York Telephone Company, to recapture the extension telephones in residences of subscribers who have more than one instrument and distribute those extra instruments among applicants for service who have

not been accorded service because of the shortage of instruments. Petitioner alleges that he is one of 75,000 residents in the territory served by respondent who have not been able to secure telephone installations and that there are outstanding 75,000 residential extensions which, if recaptured, would fill the needs of all those in the position of petitioner.

Petitioner relies for relief upon the provisions of the Public Service Law, § 91, requiring every telephone corporation to furnish such instrumentalities and facilities as shall be adequate,

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just, and reasonable and not give any undue or unreasonable preference or advantage to any person or subject any person to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

The respondent's motion to dismiss the petition is made upon the grounds (1) that the War Production Board has nation-wide jurisdiction to allocate telephone facilities and that this court should not make a segmentary invasion of that field; (2) that the Public Service Commission of the state has jurisdiction over the service of respondent and that this court should not preëempt or interfere with that jurisdiction; (3) that the petition is not sufficient to warrant the granting of petitioner's application in any event, particularly in view of the absence from the proceeding of persons having extension telephones who would be affected by the decision of the court.

Undoubtedly the War Production Board has jurisdiction in this matter but it has not elected to exercise its jurisdiction, probably for the reason that the distribution of extension telephones among residences is of minor importance to the war. The court would not be deterred from taking jurisdiction, therefore, because of the authority of the War Production Board.

[1, 2] The jurisdiction of the Public Service Commission is another matter, however, because it is specifically charged by the law of this state with supervision of the manner in which the lines and property of telephone corporations within its jurisdiction are leased, operated or managed "with respect to the adequacy

and accommodation afforded by their service. . . ." Public Service Law, § 94. The Commission is further given power to assure the adequacy and fair distribution of service. Sections 96, 97. The petitioner concedes the jurisdiction of the Public Service Commission and advises that he has instituted a proceeding before the Commission to secure the same relief as he seeks by this proceeding (the Commission still has the matter under advisement), but contends that the jurisdiction of this court is concurrent and should not be refused because of the jurisdiction of the Public Service Commission. The petitioner's principal reliance is *Kovarsky v. Brooklyn Union Gas Co.* (1938) 279 NY 304, 26 PUR(NS) 353, 18 NE 2d 287, which held that a representative action might be maintained by a consumer to restrain a gas company from making an illegal service charge and that the plaintiff was not confined to a proceeding before the Public Service Commission.

The *Kovarsky Case*, *supra*, is probably a qualification of the rule, as stated in *Towers Management Corp. v. Thatcher* (1936) 271 NY 94, 97, 2 NE(2d) 273, that mandamus will not issue where another remedy is available or provided by law and that a petitioner should exhaust his remedy before an administrative agency having jurisdiction before resorting to a mandamus proceeding.

It should be noted, however, that the *Kovarsky Case*, *supra*, was not a mandamus proceeding but was an action for an injunction, and the court went upon the ground that there was only a question of law involved, and in that event direct application for relief

LEIGHTON v. NEW YORK TELEPHONE CO.

might be made to the court. It was clear in that case by the express wording of the statute that the action of the respondent was illegal, without any facts to consider or other considerations to weigh.

It remains true, however, as Judge Shientag said in *Earl Carroll Realty Corp. v. New York Edison Co.* 141 Misc 266, 270, PUR1931E 297, 252 NY Supp 538, 544:

"Certainly sound policy would seem to dictate that courts should not interfere by summary adjudication or by the extraordinary remedy here sought, in matters highly technical in character and often far-reaching in their economic consequences, until they have been considered and passed upon by the trained body established for that very purpose and especially equipped to examine into the intricate facts commonly involved in public utility problems."

Also, as held in *Walsh v. LaGuardia* (1936) 269 NY 437, 199 NE 652, the parties affected are entitled to be heard.

On the face of this matter there would seem to be considerable merit in the claim that a fair distribution of telephone facilities would be aided by the telephone company taking surplus instruments which it owns from those

who have adequate telephone service without extensions and employing such instruments to establish service for those who have no service at all. On the other hand, there are many questions and considerations which would necessarily arise as to the practicability and perhaps desirability of taking such action and in fixing the standards which are to be applied in determining the need for extensions and whether extensions should be taken from one and not from another.

The formulation and administration of a recapture program, assuming its practicability and desirability, is not feasible in a court proceeding but is peculiarly the kind of matter which should receive the attention of the administrative body which has been set up for dealing with such problems. Certainly there is no mere question of law involved in this case as in the *Kovarsky Case*, *supra*, but, on the contrary, there are complicated considerations of fact, policy and administration. The court is so clear as to the unsuitability of this forum for handling such an issue, and that petitioner should be remanded to the proceeding which he has already instituted before the Public Service Commission, that the motion to dismiss the petition is granted.

GEORGIA PUBLIC SERVICE COMMISSION

GEORGIA PUBLIC SERVICE COMMISSION

Re J. Smith Lanier, Doing Business As
Interstate Telephone Company, et al.

File Nos. 19398-1, 19438-1, Docket No. 7519-A

June 8, 1945

I NVESTIGATION of rates of local exchange company; reduction
ordered.

Rates, § 194 — Unit for rate making — Lessor and lessee telephone companies.

1. Consolidation of all revenues, expenses, and investment or cost of property was approved in the case of a lessee operating a telephone exchange and receiving local revenues and a lessor owning the property and receiving toll revenues, thus obviating the necessity of making a determination as to the reasonableness of any rental payment charged as an operating expense by the lessee and credited as operating revenue by the lessor and avoiding the necessity of a complete separation between exchange and toll service, including division of revenues, expenses, and plant value, p. 214.

Rates, § 105 — Powers of Commission — Exchange and toll telephone revenues.

2. Compensation received by a lessor on long-distance toll service is part of earnings subject to regulation and, in fact, represents a portion of the charges collected from subscribers for toll service, although under a contract between the operating lessee and the lessor owning the property the lessor receives all toll revenue, p. 214.

Rates, § 202 — Unit for rate making — Telephone exchange and toll revenues.

3. Consolidation of results of exchange and toll operations at a telephone exchange was found to be the simplest method for correctly determining earnings, as well as the amount by which exchange rates should be reduced, where a lessee operated and bore the entire expense of the telephone business, retaining all revenue collected for local exchange telephone service, while the lessor received all toll revenue, representing commissions or compensation paid by another company for originating and terminating long-distance messages, p. 214.

Payment, § 53 — Discounts and penalties to enforce.

4. Discounting of telephone bills and imposition of a penalty for delayed payments should be eliminated where advance billing for exchange telephone service is permitted, p. 216.

Rates, § 103 — Jurisdiction of state Commission — Exchange telephone service — Interstate communication.

5. A state Commission, in view of the definition of "telephone exchange service" in Title 47 USCA § 153(r) and the exemption of exchange service from the jurisdiction of the Federal Communications Commission by Title 47 USCA § 221(b) has jurisdiction to prescribe rates for a local

RE LANIER

exchange company although subscribers across a state line are served, p. 217.

(KNIGHT and PERRY, Commissioners, dissent in part.)

By the COMMISSION: On March 28, 1945, the Commission issued a rule nisi against J. Smith Lanier, d/b/a the Interstate Telephone Company and Campbell B. Lanier, Miss Edith K. Lanier, Mrs. Ruth Lanier Mize, and Mrs. Gillian Lanier Nash, a partnership d/b/a the Lanier Company, to show cause why rates and charges for telephone service provided in West Point, Georgia, should not be reduced and just and reasonable rates prescribed, and why the Commission should not determine, revise, prescribe, and make effective a fair and equitable arrangement between the Lanier Company and the Interstate Telephone Company for the operation and use of telephone facilities. The rule nisi was returnable on May 9, 1945, when it came on to be heard. J. Smith Lanier appeared on his own behalf and Campbell B. Lanier appeared on behalf of the Lanier Company. Mr. C. L. Rittenhouse, principal engineer of the Alabama Public Service Commission, attended the hearing as a representative of that Commission.

The Lanier Company owns all of the telephone plant and equipment used in the rendition of telephone service in the West Point Exchange area, which, in turn, is leased to J. Smith Lanier, d/b/a the Interstate Telephone Company, who furnishes local, as well as long-distance telephone service to telephone subscribers located in West Point, Georgia, and Lanett and Shawmut, Alabama, from the West Point, Georgia Exchange. Under this lease agreement, dated July 1, 1940, J.

Smith Lanier (the lessee) pays \$10,000 per annum to the Lanier Company (the lessor), and the lessee retains all revenue collected for local exchange telephone service, while the lessor receives all toll revenue representing commissions or compensation paid by the Southern Bell Telegraph and Telephone Company for originating and terminating long-distance messages. In addition, the lessor receives a payment of \$4,200 per year from the West Point Manufacturing Company for the lease of certain trunk lines connecting the West Point telephone exchange with those of the West Point Manufacturing Company in Langdale, Fairfax, and Riverview, Alabama. The lessee bears the entire expense of operation of the telephone business, including maintenance of plant and equipment, but depreciation expense is charged by the lessor. As a result, the lessee earns little net revenue from the operation since substantially all expenses are paid from local exchange service receipts only, while the lessor's net revenue is large. As a matter of fact, the lessee pays all operators' salaries, some of whose time is used in the handling of long-distance messages, the entire revenue from which goes to the lessor.

In the hearing of this matter, Commission's counsel developed very fully the specific details with reference to the lease agreement and the purpose for which it was drawn. J. Smith Lanier formerly owned all telephone property located in and adjacent to West Point and in 1940 transferred

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this property to the Lanier Company, all of the partners of which are his children. The children gave him a note for the property, the amount of which represented its equity value at the time which was arrived at by deducting both the amount of the then existing loan (assumed by the children) and the balance in the depreciation reserve from the book value of plant and equipment. Subsequently, J. Smith Lanier gave his children his own notes from time to time until the total amount thereof equalled the amount of the note given for the transfer of the telephone property. It appears that all notes so given between father and children have now been balanced off and canceled and further that the former mortgage indebtedness on the telephone property assumed by the children has now been fully discharged by them. It follows, therefore, that the property is now owned completely by the children unincumbered by long-term debt.

[1-3] The Commission's staff introduced exhibits showing the results of operation of both the Interstate Telephone Company and the Lanier Company representing analyses of revenues, expenses, and investment as shown in the Annual Reports to the Commission. J. Smith Lanier expressed surprise over the fact that the results of operation as reported separately to the Commission, had been combined to show the over-all earnings of the telephone operation. While it is entirely proper for separate individuals or partnerships to file individual reports to the Commission so long as each report correctly shows receipts, disbursements and investment, the filing of such separate reports does not

preclude the Commission from giving consideration to them in any proper manner. Under the circumstances in this case, there are two basic methods by which over-all earnings may be measured. One method is that used by the Commission's staff consolidating all revenues, expenses, and investment or cost of property, which method obviates the necessity of making a determination as to the reasonableness of any rental payment charged as an operating expense by J. Smith Lanier and credited as operating revenue by the Lanier Company, since the result is the same, irrespective of the amount of rent paid and received. The other method of measuring earnings would involve a precise determination of the proper amount of lease payment which is to be allowed as an operating expense and in effect would require a complete separation between exchange and toll service, including division of revenues, expenses and plant value. While difficult, such a separation can be made, but obviously, it must be based on traffic for some period, and variations would be expected to occur for other periods. It was also contended by the respondent to the rule nisi that the earnings representing compensation received on long-distance toll service were beyond the jurisdiction of the Commission because such earnings represented contract payments received from another utility and that such revenue belonged to the contracting party and had no relation to rates for service. In answer, it is concluded that such revenues are part of earnings which are subject to regulation and, in fact, represent a portion of the charges collected from subscribers for toll serv-

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There would be few, if any, exchanges in Georgia which would show even a minimum fair return on a rate base if toll net earnings were excluded. Certainly it cannot be argued that toll gross revenues are to be overlooked, while at the same time deducting from exchange revenues expenses in connection therewith.

This, in effect, would be the result if the reasonableness of exchange rates in West Point is to be measured by the exchange operating earnings of the Interstate Telephone Company alone without consideration given to the earnings of the Lanier Company. Furthermore, the elimination of toll revenue, even though associated expenses be excluded at any exchange in Georgia, would require a substantial increase in exchange rates if a reasonable return on a fair rate base is to be allowed. Such a policy would be contrary to the established and sound regulatory practices of this Commission and would permit excessive earnings to the extent of such net toll revenue. It is, therefore, necessary and proper to give full consideration to all earnings, and consolidation of results of the two operations in West Point is found to be the simplest method for correctly determining such earnings, as well as the amount by which the exchange rates should be reduced.

The exhibits prepared by the Commission's staff from the annual reports of the respondents show gross exchange service revenue of \$47,550.36 received by the Interstate Telephone Company in the year 1944. The Lanier Company received a gross toll revenue of \$24,414.82 and gross revenue from lease of trunk lines of \$4,200, or a total gross revenue of \$28,-

614.82 in 1944, excluding the lease payment of \$10,000 received. The consolidated gross revenue of both companies, therefore, was \$76,165.18. Operating expenses of the Interstate Telephone Company were \$34,015.10 excluding the \$10,000 lease payment to the Lanier Company. The operating expenses of the Lanier Company for the same year were \$14,234.34 including depreciation expense in the amount of \$6,051.54. Interstate's net revenue in 1944 was \$3,535.26 after deducting the rental of \$10,000 and the Lanier Company's net was \$24,380.48, including the rental received. The total consolidated net revenue, therefore, was \$27,915.74 and this amount is not affected by the amount of the lease payment, since any such deduction on Interstate's income statement will be an equal revenue on the Lanier Company's income statement. Inasmuch as all revenues from telephone service provided to the public are being considered, the consolidation of net revenues precludes the necessity of determining the proper amount to be paid for lease of telephone property for the purpose of this case.

Mr. Campbell B. Lanier read into the record the amount of gross toll commissions received at West Point, Georgia, for each of the past thirteen years and it was contended that the present high level of toll earnings is a result of the war and that these earnings will decrease materially after the end of hostilities. It was suggested that toll earnings for the year 1940 would be more representative of average peacetime toll traffic, during which year the toll commissions received were approximately \$10,000 as com-

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pared to approximately \$24,000 in 1944. There is merit in this contention and it is recognized that toll traffic and revenue derived therefrom will decrease, the extent however, is subject to individual opinion. However, as Commission counsel brought out in cross-examination, there have been recent and substantial increases in compensation paid by the Southern Bell Telegraph and Telephone Company to the independent connecting companies for origination and termination of long-distance messages to and from independent company subscribers. The revisions in compensation made effective since 1940 approximate an increase of some 40 per cent above the 1940 level, so if 1940 is adopted as an average year to measure future revenue, the messages handled in that year on the present basis of compensation would have produced 40 per cent more gross revenue, or approximately \$14,000 as compared to that actually received of about \$10,000. This represents a reduction of some \$10,400 from the 1944 amount shown to be \$24,414.82 or a shrinkage of some 42.5 per cent and it is doubtful that toll revenue will fall off to this extent when the present war is ended.

J. Smith Lanier testified that he received a salary of \$1,500 which was charged to operating expenses in 1944 and which amount appears to be less than is justified. At the same time the net revenue received by Mr. Lanier during the year was \$3,535.26 in addition to the \$1,500 salary charged as an expense. His total income, therefore, of \$5,035.26 does not appear to be excessive, and if charged to expenses, as officer's salary, would

have reduced the consolidated net income \$3,535.26.

[4] Even granting these two adjustments are proper, the resulting net earnings are sufficient to warrant and justify a reduction in rates for exchange telephone service now provided by the Interstate Telephone Company from the present West Point, Georgia exchange, and this order will provide maximum rates which represent reductions from present rates and which will effect annual savings to telephone subscribers of \$3,936. At the present time, bills for service show a discount of \$2 on business individual-line service, \$1 on business 2-party, and 50 cents on all classes of residence service. These discounts were the result of negotiations held about fourteen years ago between the telephone company and city officials in West Point to seek lower rates for telephone service, and the telephone company agreed at that time to discount the then existing rates by the above amounts. In addition, the company has for a number of years made a practice of adding a 50-cent penalty in the event the bill is not paid by the third day of the month. However, as a general policy, it does not appear that a penalty for delayed payment of bills for telephone service is necessary or desirable, in view of the fact that the Commission permits advance billing for exchange telephone service. With a few exceptions in very small exchanges, no penalty or prompt payment discount is in effect on bills for telephone service at any other point in Georgia. This order will, therefore, eliminate discounting of telephone bills in the West Point exchange, and pro-

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hibit the imposition of any penalty for delayed payment.

[5] As stated above, the evidence shows that the subscribers located in West Point, Georgia, Lanett, Alabama, and Shawmut, Alabama are served through the exchange which is located in West Point, Georgia. The evidence also discloses that the Interstate Telephone Company has an interconnecting trunk line with the West Point Manufacturing Company over which subscribers of the Interstate Telephone Company talk as an exchange service, without additional charge, to subscribers of the West Point Manufacturing Company's telephone system located in Riverview, Fairfax, and Langdale, Alabama.

Title 47 USCA § 153(r) defines telephone exchange service as follows:

"Telephone exchange service" means service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge."

Title 47 USCA § 221(b) expressly exempts exchange service from the jurisdiction of the Federal Communications Commission where regulated by state authority.

The Georgia law gives to this Commission the authority to prescribe just and reasonable rates to be charged by persons owning, leasing, or operating a public telephone service or telephone lines in this state, and the rates prescribed herein are predicated on the

continuation of the same character of service as presently provided.

Subsequent to the original hearing, respondents on May 14, 1945, filed petition for further hearing which was granted, and the matter assigned for hearing at West Point on June 5, 1945. Thereafter counsel for respondents discussed the matter with the Commission, and on May 31, 1945, withdrew the motion for further hearing, submitting the matter on the record as made at the original hearing.

After careful consideration of the record, testimony, and exhibits presented in this case, it is the conclusion of the Commission that a reduction in exchange telephone rates is justified. Wherefore, it is

Ordered that effective with bills rendered on and after July 1, 1945, the following shall be the maximum rates for unlimited exchange telephone service rendered from the West Point, Georgia, Telephone Exchange:

Class of Service	Rate Per Month
Business Individual Line	\$4.50
Business Party Line	3.50
Residence Individual Line	3.00
Residence Party Line (Limited)....	2.25
Residence Party Line (Unlimited)..	1.75

Ordered further that J. Smith Lanier, d/b/a Interstate Telephone Company shall file a tariff with the Commission setting forth exchange telephone rates in agreement with the above prior to the effective date thereof.

Commissioners Knight and Perry concur in the rates as prescribed in the order, but dissent to the opinion as written.

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MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Re Northern Pacific Railway
Company et al.

Docket A-2031

Watab Paper Company

v.

Northern Pacific Railway Company

Docket A-6651

June 21, 28, 1945

COMPLAINT that certain affiliated railroads should be treated as one road for rate-making purposes and exempt from joint rate order; record closed and complaint dismissed.

Rates, § 195 — Unit for rate making — Affiliated railroad companies.

A railroad corporation and its subsidiary should be treated as separate companies for rate-making purposes where, for purposes of taxation, reporting to regulatory bodies, ownership of property, and for other purposes the two companies were at all times treated as separate railroads, where the Commission, in entering a joint rate order, made no finding that the railroads were or should be treated as constituting a single line for rate-making purposes, where the joint rate order included such railroad, where an exception to the order mentioned neither railroad notwithstanding that the Commission was aware of the relationship between the two and had sought the advice of the attorney general with respect thereto, where no appeal was ever taken from the order in so far as it treated the railroads as separate railroads for rate-making purposes, where a Commission proceeding relating to this subject was adjourned and never resumed, and where the railroads and shippers had acted on the assumption that the railroads were separate for rate-making purposes and subject to the joint rate order for over twenty-five years.

Rates, § 39 — Jurisdiction of Commission — Determination after lapse of time.

Statement in dissenting opinion that the Commission has jurisdiction to determine whether affiliated railroads should be treated as one line for rate-making purposes, notwithstanding a long lapse of time since an original hearing relating to the subject, p. 226.

(CHASE, Commissioner, dissents in separate opinion.)

By the COMMISSION: The above-entitled dockets having been consolidated by order of the Commission came on for hearing on March 2,

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1945, at the Commission's conference room, in St. Paul, Minnesota.

Present: All commissioners.

APPEARANCES: J. A. A. Burnquist, Attorney General, and George T. Simpson, Special Counsel, for the state of Minnesota; Maurice S. Bush, Minneapolis, and C. G. Baker, Des Moines, Iowa, for the Watab Paper Company; Conrad Olson, Commerce Counsel, St. Paul, for the Northern Pacific Railway Company.

And the Commission having heard the evidence and oral argument, makes the following findings of fact and order:

Findings of Fact

I

Complainant is a Delaware corporation engaged in the manufacture of paper and paper products at Sartell, Minnesota. Defendant is a Wisconsin corporation operating an interstate railroad extending through Sartell and Brainerd, Minnesota.

II

On and prior to December 10, 1913, and until October 23, 1941, defendant owned and operated a railroad between Sartell and Brainerd, Minnesota, and the Minnesota and International Railway Company, hereinafter designated as the M. & I., owned and operated a railroad from Brainerd to Grand Falls, Minnesota, and also operated a line of railroad owned by defendant and known as the Big Fork and International Falls Railway, extending from Grand Falls northward to the vicinity of International Falls, Minnesota, which lines formed parts of a continuous line from the Twin

Cities (St. Paul and Minneapolis, Minnesota) to the Canadian border. On October 23, 1941, defendant purchased the railroad and properties of the M. & I. at foreclosure sale and has since operated the lines of railroad extending from Brainerd to International Falls as a branch of its own railroad.

III

For forty years prior to October 23, 1941, defendant owned 70 per cent of the outstanding capital stock of the M. & I., chose five out of seven of the directors, held a mortgage on all the property of the M. & I. (which was subsequently on October 23, 1941, foreclosed) and admittedly controlled the corporate affairs of the M. & I., the two corporations having common officers, and defendant furnished to the M. & I., under contract, the services of its traffic, accounting, purchasing, legal, and claim departments. The minority stock interest in the M. & I., however, at all times evinces a strong and active interest in its affairs. They intervened in proceedings instituted by this Commission in 1916 to determine whether the M. & I. and defendant should be treated as one line for rate-making purposes and therein actively opposed such treatment, and they subsequently engaged in litigation against defendant in Federal court over the divisions of joint rates between the M. & I. and defendant. There is no evidence that defendant exercised its control of the M. & I. otherwise than for the best interests of that company. The M. & I. have kept separate books, employed its own separate maintenance forces, station employees, and operating crews, ran its

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own trains, made its own purchases, made its own separate interline report to other carriers, including defendant, and collected the tariff balances owing to it; paid defendant for joint use of the station at Brainerd, for services furnished by the traffic, accounting, purchasing, legal, and claim departments of defendant, and for heavy repairs to its equipment; paid rental for rolling stock of the defendant and other roads in accordance with the per diem rules of the Association of American Railroads; owned its own locomotives and pulpwood and box cars, and charged defendant at tariff rates for transporting defendant's materials and business cars. Passes on one road were not honored by the other. Separate contracts with defendant and with the M. & I. were entered into by the United States Railroad Administration during the period of Federal control of railroads. Separate contracts were also entered into with the railroad brotherhoods. Separate reports were made by each company to the Interstate Commerce Commission and this Commission and the Federal and state taxing authorities. Defendant had no contract right, license, or permission to use or operate the properties of the M. & I. There is no proof that it ever did use or operate said properties prior to October 23, 1941, when it purchased said properties at foreclosure sale. For purposes of taxation, reporting to regulatory bodies, ownership of property, and other purposes the two companies were at all times treated as separate railroads.

IV

On December 10, 1913, this Commission prepared scales of reasonable maximum distance rates for single line application on the line of each Class "A" railroad in the state of Minnesota, and pursuant to the provisions of Chap 90, Laws of Minnesota 1913, ordered the establishment of rates in accordance with said scales by serving upon all Class "A" roads operating in Minnesota the following order accompanied by a copy of said distance scales as Exhibit "A" attached to said order:

"Before the Railroad and Warehouse Commission of the State of Minnesota

"In the Matter of maximum class and commodity rates made pursuant to the provisions of Chap 90 of the General Laws of 1913, known as the distance tariff law.

"To the: Canadian Northern Railway Company; Chicago, Burlington & Quincy Railroad Company; Chicago, Great Western Railroad Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago & North Western Railway Company; Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Duluth & Iron Range Railroad Company; Duluth, Missabe & Northern Railway Company; Great Northern Railway Company; Minneapolis & St. Louis Railroad Company; Minneapolis, St. Paul & Sault Ste Marie Railway Company; Minnesota & International Railway Company; Northern Pacific Railway Company.

"In the above-entitled matter, the Commission having duly heard and considered the evidence and arguments, finds:

"(1) That each of the above-entitled

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ttled railway companies is a corporation operating a railroad through various parts of the state of Minnesota, and carries freight and passengers for hire.

"(2) That during the preceding year, each of said railway companies earned a gross annual earning of \$4,000 or more, per mile, and is, therefore, classified as a "Class A" railroad company.

"(3) That the classification of freight to be applied to intrastate business, except as to the commodities named in the attached schedule, shall be Western Classification No. 52, and amendments or subsequent issues, and such exceptions and changes as have been made by this Commission, the same being published in Western Trunk Line Rules Circulars 1-J and 7-B, amendments thereto or subsequent issues, and by individual rules of the carriers.

"(4) That the merchandise rates on classes 1, 2, 3, 4, 5, 'A,' 'B,' 'C,' 'D,' 'E,' and the commodity rates, shown in schedules numbered 11 to 36 inclusive, as shown in exhibit 'A,' hereto attached and made a part of this order, are reasonable maximum distance rates for all distances from one to four hundred miles, inclusive, on the line of each class 'A' railroad.

"It is expected that all joint rates voluntarily published by the railway companies, and all rules for the handling of joint traffic which have been published in accordance with the provisions of the joint rate order made by the Commission on July 31, 1912, shall remain in effect until such new joint rates or rules have been promulgated, as may be required by the provisions of

Chap 344 of the General Laws of 1913.

"The Commission urges upon each railway company the importance of giving these rates a trial upon all intrastate business, for at least one year, and of keeping a statement of differences in revenue under the present rates and those now proposed. If any class 'A' railway company can show that the schedules of rates are confiscatory, it is at liberty to make an application for an increase, and a hearing will be granted by the Commission.

"It is therefore ordered, that each of the above-entitled railroads be and the same is hereby required to publish and put into effect, the scale of reasonable maximum class and commodity rates as shown in exhibit 'A' hereto attached, by the first day of January, A. D. 1914, and to apply said rates to the movement of intrastate shipments of freight in the state of Minnesota.

"By order of the Commission
"A. C. CLAUSEN,
"Secretary.

(Seal)

"Dated at St. Paul, Minn., this 10th day of December, A. D. 1913."

In entering said order, the Commission made no finding that defendant and M. & I. were or should be treated as constituting a single line for rate-making purposes but instead, directed said order separately to each of said railroads. Defendant and M. & I. separately complied with the foregoing order by publishing and filing with the Commission their separate individual tariff schedules showing rates in accordance with the scales therein prescribed between stations on the line of railroad which each operated. Neither of said tariff schedules so

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published showed any rates for the transportation of property between points on the line of the M. & I. and points on the line of defendant. Said tariffs were accepted by the Commission as in compliance with said order.

V

The rates charged on the shipments of pulpwood described in the complaint were those named in joint tariffs published and filed by defendant and M. & I. in accord with an order of this Commission made under date of July 27, 1914 (and its subsequent amendments), which order was promulgated pursuant to Chap 344, Laws of Minnesota 1913 (Minnesota Statutes 1941, § 216.54). After the enactment of said Chap 344, Laws 1913, this Commission published a "Tentative Joint Rate Order" coupled with an order directed to certain designated railroads including defendant and M. & I. to show cause why it should not be adopted. Copies of this order were also sent to over 100 shippers who had asked to be placed on the mailing list for such copies, public notice of the pendency of the proceedings having previously been given by publication of a notice thereof in three successive issues of the daily papers. Extensive hearings were thereupon held. During the course of such hearing the question whether defendant and the M. & I. were separate and distinct roads under the provisions of Chaps 90 and 344 of the Laws of 1913, or should be treated as one line for rate-making purposes was raised by interested shippers of forest products from points on the line of the M. & I. to points on defendant's line, and testimony was received as to the effect of

the proposed joint rates on their businesses and their competition.

The hearings were followed by the joint rate order of July 27, 1914. It was addressed to twenty-six separate railroads, including the M. & I. and Northern Pacific by name, and ordered them to make joint through rates on certain percentages of local rates not material here. Rule III of the order is entitled "Exceptions." Therein the "Omaha" and "Northwestern" roads are given special treatment, and twelve others, not including either the M. & I. or the defendant, are exempted from certain provisions of the order. Rule XI of the order reads:

"Each carrier not exempted by this order is required to establish joint rates in accordance with these rules to apply through all points of connection within the state of Minnesota, to take effect Monday the 10th day of August A.D. 1914. This may be done by naming the rates or providing specific rules to govern in making them."

In short, the Commission was aware of the situation existing between the M. & I. and the defendant and had apparently sought the advice of the attorney general with respect to it. It was aware that shippers contended they should be considered as one road and testified as to the effect of considering them as separate roads. Nevertheless, the order is directed to each railroad separately, the rule on "exceptions" mentions neither, and the order is specifically directed to carriers not exempted therefrom. The very fact that defendant and the M. & I. were separate corporations each operating a railroad and were treated as separate roads for all other purposes both at that time and since demon-

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strates that, on its face, the joint rate order was to apply to them. To exempt from the order it would have been necessary to make a specific exemption as was done in the case of some other roads. Nor can it be said that the Commission was remiss in its duty and did not pass upon the question. The testimony before the Commission shows that the issue was squarely presented and subsequent actions by the railroads, shippers and the Commission itself confirm the fact that the Commission did determine that defendant and the M. & I. were separate railroads for the purposes of the joint rate order.

VI

Thereafter an appeal to the district court of the state of Minnesota was taken from said joint rate order pursuant to the provisions of Minnesota Statutes 1941, § 216.24, in so far as it treated the "Omaha" and "Northwestern" railroad companies as separate railroads for rate-making purposes. The district court reversed that part of the order and was affirmed by the state supreme court in *State ex rel. Hall v. Chicago & N. W. R. Co.* (1916) 133 Minn 413, 158 NW 627. No appeal was ever taken from said order in so far as it treated defendant and M. & I. as separate railroads for rate-making purposes.

VII

Shortly after the decision of the state supreme court in *State ex rel. Hall v. Chicago & N. W. R. Co. supra*, this Commission on its own motion, initiated proceedings entitled "In the Matter of the Northern Pacific, M. & I. and B. F. & I. F. Railway Com-

panies being considered as one line for rate-making purposes," and directed to said companies an order to show cause why they should not be so considered. A hearing therein was held on October 10, 1916, at which said railway companies and Backus-Brooks Lumber Co., the minority stockholder in the M. & I., appeared. Considerable testimony was taken and the hearing was then adjourned without date, as the Commission stated it wished an opportunity to examine the exhibits before cross-examining witnesses and hearing argument. The hearings were never resumed, however, and no formal order of the Commission was ever made nor was the matter ever pursued by the Commission or any shipper. The tariffs naming the joint rates assessed on plaintiff's shipments remained in effect with the knowledge of the Commission and all interested shippers. By refraining from entering any order in said proceeding the Commission continued to treat defendant and the M. & I. as separate railroads for rate-making purposes and determined that the joint rate order of July, 1914, applied, and everyone, including complainant, proceeded on that assumption for over twenty-five years.

Commissioner CHASE objects to the proposed order or any vote upon it for the following reasons:

1. Another order more truthfully presenting the matter was presented to the Commission on Thursday, June 21, 1945, and is still pending.

2. The order now proposed does not state the facts.

3. The Commission should not dismiss without more thorough study and consideration a matter which through the Commission's own negligence has

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been allowed to remain uncompleted and uncompleted for a quarter of a century.

1

At the Commission's meeting on Thursday, June 21, 1945, I presented and moved the approval of a proposed order in this matter. Commissioner Matson declined to vote. Commissioner Holmberg voted no. Consequently the proposed order, drawn by the attorney general's office, was neither approved or rejected and takes precedence over the order now proposed.

2

The order now proposed does not state the facts.

When the matter came before the Commission first, this body was composed of outstandingly able men. Judge Ira B. Mills was chairman, C. F. Staples and Charles E. Elmquist, the other two members. Commissioner Elmquist wrote the order of July 27, 1914, to which reference is made in both orders presently proposed.

With full knowledge in the premises and of its orders of 1913 and 1914, the same Commission, with the exception of Commissioner Staples who had been succeeded by O. P. B. Jacobson, on its own initiative issued an order dated September 1, 1916, directing the railroads to show cause before the Commission on September 21, 1916, why they should not file tariffs making rates to and from all points on the lines of said companies on a continuous mileage basis. On request of a carrier a continuance was granted and the hearing reset for October 10, 1916. The M. & I. alone interposed

an answer, the Backus-Brooks interests intervened. On page 104 of the transcript it will be noted that at the conclusion of the testimony by the carrier and intervenors Commissioner Elmquist stated: "We don't want to examine Mr. Dahlberg at this time, we can't do it without looking into his figures." Mr. Phillips of counsel then said: "That concludes our case on the facts." There then ensued the following: *Judge Mills*: "All right we will continue this case without date. When we want to cross-examine you more, after we have examined the exhibits, if some more testimony is to be put in on behalf of the state we will notify you." *Mr. Phillips*:—"I take it we will have an opportunity to present argument before this case is decided?" *A*:—"Yes."

From the foregoing it is obvious that neither the case, the evidence, nor the argument was concluded. The state required more time to study the evidence of the carrier and the intervenors. This was October 10, 1916. In April, 1917, the United States entered the World War and soon took over the managements of the railroads. Consequently this matter could not be concluded at that time. Later in 1917 Commissioner Elmquist resigned from the Commission and entered Federal service at Washington. In 1921 Judge Mills died.

Thus the Commission members first concerned in this problem passed from the Commission.

That the problem was not slighted or considered closed is proved by letters from the Commission, for example, one of November 4, 1916, as follows:

"In answer to your letter of Novem-

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ber 3rd, beg to say that at the hearing held in this office on October the 14th, with reference to the use of continuous mileage over the N. P. and M. & I., the case was continued without date for the purpose of allowing the Commission and the attorney general to digest the voluminous exhibits filed with regard to this case and for the purpose of formulating some plan for the cross-examination of the witnesses.

"On account of the pressure of other work no further hearing in the case has been held up to this time."

And another letter of November 22, 1916, said:

"Answering yours of November 21st beg to say that the question of the N. P. and M. & I. Railroads being declared one company is still before this Commission.

"We are quite convinced that when order is made in this case that it will be appealed by the two companies, but at the present time no order has been made."

There is nothing in the foregoing letters to suggest any thought of dismissal in the mind of the Commission.

A third letter from the Commission is dated November 27, 1916. It says:

"Your communication has been reviewed by the Commission, and I am directed to advise you that up to the present time no conclusion has been reached in this matter, but your letter has been placed on file and as soon as decision is given you will be duly notified."

And then on January 15, 1917, the Commission answered a fourth letter thus:

"This is to advise you that hearing to show cause has been held, but no decision has as yet been arrived at

by the Commission. However, your letter will be attached to the file, and as soon as same is rendered we shall take pleasure in communicating with you."

In a fifth letter, dated January 29, 1917, the Commission told of the order to show cause and said:

"Both companies answered and a hearing was held in the office of the Commission in October, 1916, and the question is now before the Commission for an order. Undoubtedly when an order is made it will be contested by the carriers."

The letters indicate that the matter was not concluded, that the Commission had it under advisement, and that when an order was drawn it probably would be unfavorable to the carriers.

On the last page of his proposed order Commissioner Matson states: "The hearings were never resumed, however, and no formal order of the Commission was ever made nor was the matter ever pursued by the Commission or any shipper."

Commissioner Matson was appointed to this Commission in July, 1923. For twenty years he has had the opportunity to pursue the matter. Less than nine months after he assumed office Consolidated Traffic Association of Minneapolis endeavored to pursue the matter. The association's letter was dated April 5, 1924, and in reply the association was told by the secretary of the Commission of which Commissioner Matson was a member:

"During Federal control, the Commission could not, of course, take any proceedings in the matter and since the return of the roads to their owners it was deemed advisable not to make any order in the case."

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Who deemed it advisable and why?

Less than seven months after Commissioner Matson assumed office, James H. Krueger, representing various shippers, tried to pursue the matter. To a letter dated November 8, 1923, he received from the Commission a reply containing this statement:

"During Federal control of the railways of the country the Commission could not of course proceed with any investigation of the books and accounts of the two railroads involved. Since the return of the roads to their owners the Commission has not decreed it advisable to make any order which would close the case."

Manifestly shippers were pursuing the matter and the statement to the contrary on the last page of the proposed order is untrue.

3

It is the duty of this Commission to study and determine matters within its jurisdiction. This matter is within the Commission's jurisdiction. It should be concluded and we who constitute the Commission should not attempt to evade our responsibility as the proposed order attempts to do. Evading an issue which has been allowed to lie around here for twenty-nine years is discreditable to all of us.

Because of the foregoing, I object to the proposed order or any vote thereon.

As a further reason for his dissent Commissioner Chase resubmitted a proposed order prepared by the office of the attorney general, to wit:

"Report, Findings of Fact, and Order
[as proposed by Commissioner Chase]

"The above-entitled matter duly

came on for hearing and determination upon a formal complaint and ultimately upon a formal answer as hereinafter set forth.

"The records of the Commission disclose that on December 10, 1913, in accordance with the provisions of Chap 90, Laws of Minnesota for 1913, in a proceeding, then pending before the Commission, affecting single line maximum class and commodity rates, the Commission issued an order, to become effective January 1, 1914, directed to certain railway companies, including those here involved, requiring them to put into effect, on such date last mentioned, certain rates carried in the order, for the transportation of divers commodities for single line application based on distance up to 400 miles; and, in accordance with the provisions of Chap 344, Laws of Minnesota, also for 1913, in a proceeding then pending, the Commission issued a further order to become effective August 10, 1914, fixing percentages governing transportation rates, for divers commodities, for joint line application; and further show that by reason of complaints filed with the Commission and on September 1, 1916 in a proceeding before the Commission, bearing Commission Docket No. A-2031, an order was issued, directed to certain railway companies, including the Northern Pacific Railway Company, hereinafter called Northern Pacific, to Minnesota and International Railway Company, hereinafter called M. & I. Railway, and to Big Fork and International Falls Railway Company, hereinafter called Big Fork Railway, jointly, directing that such railway companies show cause before the Com-

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mission on September 21, 1916, why such railway companies should not file tariffs with the Commission, making rates, to and from all points on the line of such railway companies, on a continuous mileage basis, in accordance with the order of the Commission which became effective January 1, 1914, as above stated.

"The Commission in the order of September 1, 1914, as a basis for such action, recited and therein provided that:

"It appears by the reports of the above-named Railway Companies,

"That the Northern Pacific Railway Company has control of the Minnesota & International Railway Company by the ownership of 70 per cent of the capital stock of that company; and that the Northern Pacific Railway Company owns the Big Fork and International Falls Railway Company.

"The Commission is also advised that all the business of the Minnesota & International Railway Company and the Big Fork and International Falls Railway Company is transacted by the officers of the Northern Pacific Railway Company, and that the entire policy of the Minnesota & International Railway Company is directed by the Northern Pacific Railway Company as their owner.

"The tariffs on file with the Commission make joint rates between points on the Northern Pacific and points on the other two railway lines.

"It is therefore *ordered*, that all the above-named Railway Companies show cause before the Railroad and Warehouse Commission at its office at the State Capitol in the city of St. Paul, Minn., on Thursday, September 21, A.D. 1916 at 10 o'clock in the

forenoon, why they should not file tariffs making rates to and from all points on the lines of said companies on a continuous mileage basis according to the rates promulgated by the Commission effective, January 1, 1914.'

"That the date of such hearing was thereafter duly continued to October 10, 1916, and that then the M. & I. Railway, alone, interposed an answer; and denied, in effect, that the business of the M. & I. Railway was transacted by officers of the Northern Pacific or that the Northern Pacific directed the policy of the M. & I. Railway.

"That the M. & I. Railway appeared at such hearing by C. W. Bunn, general counsel of the Northern Pacific; Backus-Brooks Lumber Company, a corporation, also appeared by T. L. Phillips as counsel; E. W. Backus, as Trustee, and W. F. Brooks, individually, also appeared; and Backus-Brooks Company, E. W. Backus as Trustee, and W. F. Brooks, on petition, were permitted to intervene therein and become parties thereto, and subsequently offered evidence which was received by the Commission, intending to support the answer of the M. & I. Railway; that evidence was also offered and received by the Commission on behalf of M. & I. Railway, and that thereupon the general counsel for the Northern Pacific, as counsel for the M. & I. Railway and Big Fork Railway, argued to the Commission that the rates established by the Commission as single line rates, based on mileage, in the order of the Commission, which became effective the first day of January, 1914, above mentioned, were confiscatory.

"That the state of Minnesota also

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appeared thereat by H. C. Flannery, then an assistant attorney general thereof, but that no evidence was offered to, or received by, the Commission for or on account of the state.

"That at the close of the testimony so offered and received the Commission directed that the matter be continued "without date" with the understanding that if "more testimony was to be put in on behalf of the state" the railway companies and the intervenors would be notified.

"The records of the Commission further show that in the intervening years no additional testimony, in the matter just mentioned, has been offered to or received by the Commission; that the Commission has not made a report thereon; has not made or filed findings of fact in relation to the matters there involved; has not made an order in the premises; and that the matter is still open for the reception of evidence and for such action as the Commission may now determine to be necessary, just, and proper therein.

"The foregoing was the situation, as shown by the records, when, on January 13, 1945, there was filed with the Commission a verified complaint, which was given Commission Docket No. A-6651, and in which the Watab Paper Company, a corporation, was complainant, and the Northern Pacific was defendant, alleging, among others, that the plaintiff was a shipper of pulpwood, in carload lots, over the lines of the Northern Pacific, the M. & I. Railway, and the Big Fork Railway, from points thereon to Sartell, Minnesota; that the rates charged for such shipment were joint line rates, and were in violation of Chap 90, Laws of

1913, and the order of the Commission, dated December 10, 1913, as subsequently modified; that the control and operation of the M. & I. Railway and the Big Fork Railway, by the defendant, during the period between November 10, 1936, to October 22, 1941, resulted in the imposition of joint line rates, in violation of such Chap 90, Laws of 1913, and the order of the Commission above mentioned, and were, therefore, unlawful and unreasonable.

"That the complainant also charged the defendant with maintaining discriminatory rates for the period between November 10, 1936, and October 22, 1941, as shown in Northern Pacific Tariff No. 2323-L, effective October 3, 1936, as amended, together with Northern Pacific Tariff No. 2323-M, effective April 15, 1939, as amended.

"That on January 19, 1945, the Commission entered an order in Commission Docket No. A-6651, providing for the service of such complaint upon the defendant; and requiring, in accordance with the statute, that the defendant satisfy such complaint or answer the same in writing within twenty days after service; that on February 16, 1945, the Commission entered a further order reciting the situation existing in Commission Docket No. A-2031, as above set forth, and directed that Commission Dockets A-2031 and A-6651 be consolidated for such action in the premises as the Commission might deem necessary and just.

"It then appeared that the defendant, within the time limit, had not satisfied such complaint or filed an answer thereto; but that on the 13th

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of February, 1945, the defendant had filed with the Commission a motion for an order dismissing such complaint for want of jurisdiction. That thereupon and on the 26th of March, 1945, the Commission denied the motion and extended to April 2, 1945, the time within which answer to the complaint might be made. The defendant, on April 2, 1945, answered the complaint and filed such answer with the Commission.

"The answer called attention to the proceeding before the Commission in 1916, Commission Docket No. A-2031; alleged, in effect, that the joint rates mentioned in the complaint had become final; that no appeal had been taken therefrom, and questioned the authority of the Commission to declare now the Northern Pacific and M. & I. Railway to have been one line for rate-making purposes, so as to render unlawful the joint rates mentioned in the complaint; and further called attention to a proceeding then pending in the United States district court for the district of Minnesota, between the same parties; and attached to such answer a copy of the findings of fact, conclusions of law, and order for judgment based thereon, made and entered by the judge of such court trying such action, in which it is stated:

"That this court is without jurisdiction in this proceeding to review, revise, or correct either the order of the Railroad and Warehouse Commission of July 27, 1914, or amendments thereof, which authorized and directed the establishment of the joint rates assessed upon the shipments described in the complaint, or the rates established pursuant thereto, but this court is bound by said order and by the

tariffs published pursuant thereto, and is without jurisdiction to determine, on its merits, whether or not defendant and the M. & I. were a single line for rate-making purposes between 1936 and 1941.

"As an administrative body the Commission (Railroad and Warehouse Commission of the state of Minnesota) has wide authority in exercising its jurisdiction. It is conceded that it has the power to determine whether defendant and the M. & I. were one or separate roads for rate-making purposes."

"The above-entitled matters, so consolidated, then came on for hearing before the Commission on March 2, 1945, as to Commission Docket No. A-2031; and on April 9, 1945, as to Commission Docket No. A-6651.

"Present: The Commission.

"APPEARANCES: J. A. A. Burnquist, Attorney General, and George T. Simpson, Special Counsel, St. Paul, for the state of Minnesota; Maurice S. Bush, Minneapolis, and C. J. Baker, Des Moines, Iowa, for Watab Paper Company; Conrad Olson, Commerce Counsel, St. Paul, for Northern Pacific Railway Company.

"And the Commission, having read the record of the hearing had before the Commission in 1916, including the testimony then offered and received, and having heard all the testimony offered and received in the hearings of March 2, 1945, and April 9, 1945, and having considered the same and all thereof and being fully advised in the premises, hereby makes and files the foregoing report, the following findings of fact, and order:

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"Findings of Fact

"I

"That between November 10, 1936, and October 22, 1941, inclusive, the complainant was, and now is, a corporation engaged in the manufacture of paper and paper products, from pulpwood, at Sartell, Minnesota; and at all said times a shipper thereof in carload lots, in intrastate commerce, over the lines of the defendant, the lines of the M. & I. Railway, and the lines of the Big Fork Railway, to and from the station of Sartell.

"II

"That prior to 1913, and to and including the 22nd day of October, 1941, at least, the defendant was the owner of 70 per cent of all the outstanding capital stock of the M. & I. Railway, constituting a majority thereof, which, in 1913 and thereafter, operated a line of railway, from a connection with the lines of the defendant at Brainerd, to Grand Falls, Minnesota. That the defendant had caused to be incorporated the Big Fork Railway, and, owning all of the capital stock thereof, had constructed, or caused to be constructed, a line of railway from Grand Falls to International Falls, Minnesota, which line of railway the M. & I. Railway, subsequent to the construction thereof and to and including the 22nd day of October, 1941, operated under a lease from the Big Fork Railway.

"III

"That, in 1903, the defendant, for moneys advanced, and otherwise, then caused a mortgage to be executed by the M. & I. Railway in favor of the

defendant to secure the same in a sum ultimately exceeding a million dollars; that such mortgage covered all the lines and properties of the M. & I. Railway; that on October 22, 1941, the defendant foreclosed such mortgage, and thereunder and thereby then became, and since then has been, together with the ownership and control of the respective terminals at St. Paul, Minneapolis, and International Falls, the title owner of such lines and properties and the operator of a continuous line of commercial railroad from St. Paul into the terminals in International Falls, Minnesota.

"IV

"That prior to, and on December 10, 1913, and to and including October 22, 1941, the entire line of railway from St. Paul to International Falls, Minnesota, was a single connecting line of commercial railway under the control of defendant and subject to the provisions of Chap 90 of the Laws of Minnesota for 1913, and to the order of the Commission of December 10, 1913.

"(a) That each of the annual reports made to the Commission by the M. & I. Railway for 1913 to 1921, inclusive, admits that the lines of the M. & I. Railway were then under the control of the defendant:

"(b) That the report of the Interstate Commerce Commission made in 1921, states:

"'Minnesota and International Railway Company is controlled by Northern Pacific Railway through ownership of a majority of the outstanding capital stock.'

"(c) That from January of 1913 to October 22, 1941, a majority of the

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directors of the M. & I. Railway were selected and controlled by or were officers or directors of defendant herein and common to both companies:

"(d) That the defendant herein, from the time of the construction of the line of railway from Grand Falls to International Falls, known herein as the Big Fork Railway, was the owner of all of the capital stock of the latter named railway company:

"(e) That the order of the Commission of December 10, 1913, made and promulgated a general tariff of rates for single line application, applicable to certain railway companies and common carriers then operating within the state of Minnesota, including the defendant herein and the M. & I. Railway; and that in and for the operation of the M. & I. Railway, in conjunction with the operation of the lines of defendant, prescribed therein, the maximum of the only lawful rates for the transportation of all freight and commodity shipments, over the lines of the railways above mentioned, extending from St. Paul to International Falls, Minnesota; that such rates, so prescribed were not shown to be confiscatory at the hearing before the Commission on October 10, 1916, or at any time; have been modified from time to time since, and as so modified, are now in force thereover.

"That at all times since the passage of Chap 90, Laws of Minnesota for 1913, the defendant and M. & I. Railway were one road for rate-making purposes.

"V

"That on September 10, 1916, the defendant was maintaining joint line rates for all shipments of freight and

commodities, southward to Sartell, over the lines of the defendant and the lines of the M. & I. Railway and Big Fork Railway, in violation of the provisions of Chap 90, Laws of Minnesota for 1913, and the order of the Commission of December 10, 1913, and continued so to do until October 22, 1941; and single line rates on certain commodities northward, from all points on the lines of the defendant and M. & I. Railway to points on the Big Fork Railway, for the same period; and that at said date last mentioned the defendant, voluntarily, discontinued the imposition of such joint line rates and then, voluntarily, established and has since maintained, in lieu thereof, single line rates; that the maintenance of such joint line rates was open and notorious, and that no proceedings have been brought by the state of Minnesota except the proceeding of 1916, until the filing of the complaint herein or by private individuals, questioning the right of the defendant so to do.

"VI

"That the maintenance, application, and collection of joint line rates, on pulpwood, from points on the M. & I. Railway and Big Fork Railway to Sartell, Minnesota, on the Northern Pacific, and the maintenance, application, and collection of single line rates on the same commodity, from points on the Northern Pacific and M. & I. Railway to destination points, on the Big Fork Railway, as hereinbefore set forth, was unduly prejudicial to complainant; and unduly preferential to receivers of pulpwood at points on the Big Fork Railway; and was discriminatory." [Order omitted.]

MINNESOTA RAILROAD AND WAREHOUSE COMMISSION

Memorandum

In fairness to all parties, including the members of the Commission constituting that body in 1916 and during the ensuing years, it should be noted that the chairman, Judge Mills, died shortly after 1916. That it was a reasonable assumption for the Commission to make, subsequent to 1916, that the single line rates, affecting transportation over the lines here involved, carried in the order of December 10, 1913, and which became effective on January 1, 1914, having been rather pointedly called to the attention of the Northern Pacific in 1916, would, voluntarily, be put in force by the defendant and the order observed. State ex rel. Hall v. Chicago & N. W. R. Co. 133 Minn 413, 158 NW 627, it is also worthy of note in this connection, was decided on June 30, 1916.

But World War I was then coming on, and, in the meantime, there had been a complete change in the personnel of the Commission, and in the employees thereof, whose duty it was to keep the Commission informed as to the progress of its pending affairs. After the war, other matters took the attention of everybody; and, in any event, until the filing of the above entitled complaint, no one on the Commission, as at present organized, at least, knew of the existence of the facts as above set forth; and, quite naturally, the Northern Pacific made no outcry.

The duty of the Commission, at all times, is to establish just, reasonable, and nondiscriminatory rates for the transportation of freight in Minnesota; and it is the right of the public to enjoy the same at all times. When

rates violating such right are found to exist, it is the further duty of the Commission to rectify them, not only as to the future, but also to declare for the past, what then were just, reasonable, and nondiscriminatory rates.

The statutes of the state of Minnesota creating the Commission and defining its duties; and the act of Congress creating the Interstate Commerce Commission and defining its duties, due to certain historical facts which need not to be stated here, greatly still resemble each other.

The Interstate Commerce Commission and the Courts have pointed out at various times that a rate for future application is a legislative function; but that the investigation of a proceeding, involving the applicability of rates in the past, is within the administrative powers of the Commission; and has said:

"We are of the opinion, . . . that we have power to make findings on the applicability or lawfulness of rates charged by common carriers by motor vehicle in the past. . . .

When issues as to the applicability and lawfulness of rates are presented in complaints, the parties are entitled to a determination of those issues although the rates in effect when the shipments moved may have been changed prior to our determination of the issues. Findings on the applicability and lawfulness of charges on past shipments, if they served no other purpose, would be valuable future guides to shippers and carriers. Although we are without power to award reparation under the Motor Carrier Act, 1935, we construe the provisions thereof as conferring power on us to make findings whether rates charged in the

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past were applicable and lawful. This conclusion is, we believe, supported by the reasoning of the United States Supreme Court in *Texas & P. R. Co. v. Abilene Cotton Oil Co.* (1907) 204 US 426, 51 L ed 553, 27 S Ct 350, 9 Ann Cas 1075." *W. A. Barrows Porcelain Enamel Co. v. Cushman Motor Delivery Co.* (1939) 11 M. C. C. 365, 366, 367; *Cramer v. Chicago, R. I. & P. R. Co.* (1911) 153 Iowa 103, 133 NW 387.

Further, this Commission believes that, notwithstanding the passage of the years and the events, that have happened, since the order of the Commission continuing the hearing of 1916 was made, the records of the Commission should be closed; and that it is the right and duty of the Commission now so to do.

As to the merits of the contention of the defendant that the Commission is without jurisdiction, now, in the premises because of the lapse of time since the hearing before the Commission in 1916; and that the application of rates, other than single line rates, to traffic thereover in the meantime, such claim is without force.

The Commission has jurisdiction to determine what may have been a

reasonable, lawful rate in a past situation. *Backus-Brooks Co. v. Northern P. R. Co.* (1927) 21 F2d 4.

That the fact that the Commission prescribed rates for joint line applicability is immaterial. *State ex rel. Smith v. Chicago, M. & St. P. R. Co.* (1917) 139 Minn 55, 63, 165 NW 869.

Finally, it may be said that the application of any rates other than the single line rates for traffic, originating and terminating on the lines of the defendant and the lines of the M. & I. Railway or Big Fork Railway, as prescribed by the Commission in the order of December 10, 1913, except as such rates have been lawfully modified in the meantime, were at all times since said date, last mentioned, unlawful. There is an entire absence of any order of the Commission authorizing the maintenance of joint rates for the transportation here involved.

A violation of law, no matter how open and notorious or how long continued, can never ripen into a right to continue so to do. *Bell Lumber Co. v. Great Northern R. Co.* (1916) 135 Minn 271, 160 NW 688; *Solum v. Northern P. R. Co.* (1916) 133 Minn 93, 157 NW 996.

Rustless Iron & Steel Corporation et al.

v.

Steuart Purcell et al., Constituting the
Public Service Commission of
Maryland, et al.

June 25, 1945

COMPLAINT against memorandum of Commission containing
statement of policy during rate proceeding; dismissed.

Appeal and review, § 8 — Orders appealable — Statement of policy.

1. No appeal can be taken from a statement of policy, made by the Commission during the course of a rate case, to the effect that it considers that the property should be valued as a whole and not segregated into parts and that it will not hear further evidence on the question, p. 238.

Judgment, § 1 — Declaratory judgment — Review of statement of policy by Commission.

2. An action cannot be maintained under the Declaratory Judgments Act, as amended in 1945, for anticipatory relief against a statement of policy by the Commission in a rate case, such case being within the exception of § 6 of the act which expressly excludes actions when a statute provides a special form of remedy for a specific type of case, p. 243.

APPEARANCES: Harry N. Baetjer and John Henry Lewin, on behalf of the complainant Rustless Iron & Steel Corporation; Charles T. LeViness, General Counsel, and Philip H. Dorsey, Jr., People's Counsel, on behalf of the Public Service Commission of Maryland; Thomas J. Tingley, on behalf of the Mayor and City Council of Baltimore; George A. Finch, on behalf of John C. Munder et al.; Emanuel Gorfine, on behalf of The C. Hoffberger Company; Edwin M. Sturtevant and Clarence W. Miles, on behalf of the Consolidated Gas, Electric

Light & Power Company of Baltimore.

NILES, J.:

1—*Nature of the Case*

The present case presents two fundamental questions:

(1) Can an appeal be taken under the Public Service Commission Law from a statement of policy made by the Commission during the course of a rate case, to the effect that it considers that the property should be valued as a whole and not segregated

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into parts, and that it will not hear further evidence on the question; and

(2) If not, can a review of such action be had, and the rights of the parties declared under the Declaratory Judgments Act?

2—History of the Case

The present proceedings arise out of a complaint of the people's counsel of the state of Maryland filed on May 23, 1944, before the Public Service Commission, as a result of which the Public Service Commission undertook an investigation of the reasonableness of the electric rates charged by the Consolidated Gas, Electric Light and Power Company of Baltimore (hereinafter called Consolidated).

The Rustless Iron and Steel Corporation (hereinafter called Rustless), a large industrial consumer of electricity, intervened in the rate case, and throughout the proceedings before the Public Service Commission has sought a reduction in the electric rates charged by Consolidated to Rustless and all other customers. Rustless has taken a leading part in the presentation of the case for a reduction, and has also advocated strongly that in fixing the rate base for Consolidated, the Commission should value separately the properties of Consolidated devoted to the production of electricity, the production of gas, and the production of steam, the object of such division being to establish a "segregated base." Heretofore, over a period of at least thirty years, the Commission has valued all the utility properties of the three classes together, and has fixed a rate of return based upon such "unified base." Rustless complains of the established practice,

and whether or not the Commission will continue to use a unified rate base or will, as desired by Rustless, adopt a segregated rate base, is one of the important questions in the whole proceedings. The position of Rustless is that Consolidated, on any theory of valuation, earns on its electric business a return about twice that which it earns on its gas business, and makes a loss on its steam business; hence, under a unified base it is inevitable that the high earnings of the electric business illegally subsidize the gas and steam business to the extent of the inequality.

Hearings began on June 6, 1944, before the Public Service Commission and have continued for more than a year. At the present time, all parties have completed the presentation of their cases in chief, and there is some testimony still to be taken. No formal valuation order has been made, and no decision of any sort has been rendered, except the memorandum of April 18, 1945, discussed below.

The nature of the proceedings is the usual "rate case," beginning with the order of the Public Service Commission instituting, in general language, an investigation of the reasonableness of the electric rates. In its final result, the investigation may result in any of the following:

(1) a new valuation, constituting the rate base, or a confirmation of the old valuation;

(2) a determination of the fair rate of return to which the Consolidated is entitled, either confirming the existing rate or establishing a new rate;

(3) the establishment of new schedules for electric service, either confirming the old schedules, or modifying

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them in some or all the categories into which the electric service is divided.

On April 18, 1945, the Commission, at the request of Consolidated, issued and served on the parties a document entitled a "Memorandum,"¹ which recited that, as a result of the pending investigation, Consolidated on September 26, 1944, filed an application to increase its gas rates if its electric rates should be reduced; that Consolidated has now come to the point in the presentation of its case where it was required to decide whether to rest with evidence of the valuation of its property as a whole or introduce evidence of valuation broken down into separate valuations for electric, gas and steam; that Consolidated had filed a motion on March 7, 1945, requesting that the Commission rule as an interlocutory matter whether or not it would base its ultimate decision on the valuation of the company's property as a whole or would segregate the valuation as requested by certain

intervenors. The memorandum thereupon stated:

"For the information of the parties the Commission deems it desirable to make the following statement of policy:

"In the light of all the evidence presented in this case and mindful of the Commission's practice of more than thirty years standing of fixing the return to this company on a unified rate base, the Commission is of the opinion that the property of the Consolidated Company should be considered as a whole in determining a fair return and should not be segregated into parts on the basis of particular services rendered. For this reason the Commission will not consider any further evidence with respect to the value of the Consolidated Company's property allocated to particular classes of service as distinguished from the value of its property as a whole."

The Commission has thus, on a re-

¹ The full text of the memorandum is as follows:

"PUBLIC SERVICE COMMISSION OF MARYLAND

Memorandum

"In the Matter of the
Rates of Consolidated
Gas Electric Light and
Power Company of Baltimore.

Before the
Public Service
Commission
of Maryland

Case No. 4661

"April 18th, 1945.

"Consolidated Gas Electric Light and Power Company of Baltimore last September 26th filed with this Commission an application to increase its gas rates if, as a result of this investigation, its electric rates should be reduced. The Consolidated Company has now come to a point in the presentation of its case where it must decide whether to rest with evidence of the valuation of its property as a whole or introduce evidence of the valuation of its property broken down into particular uses, that is, separate valuations of property used for electricity, gas and steam heat. Certain of the intervenors in this case have urged that this Commission for the purposes

of rate-making segregate the value of the property rather than consider the Consolidated Company's property as a whole. Consolidated Company filed a motion on March 7, 1945, requesting that this Commission rule as an interlocutory matter, whether or not it will base its ultimate decision on the valuation of the company's property as a whole, or segregate the valuation thereof as requested by the said intervenors.

"For the information of the parties the Commission deems it desirable to make the following statement of policy:

"In the light of all of the evidence presented in this case and mindful of the Commission's practice of more than thirty years standing of fixing the return to this company on a unified rate base, the Commission is of the opinion that the property of the Consolidated Company should be considered as a whole in determining a fair return and should not be segregated into parts on the basis of particular services rendered. For this reason the Commission will not consider any further evidence with respect to the value of the Consolidated Company's property allocated to particular classes of service as distinguished from the value of its property as a whole."

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quest to rule as "an interlocutory matter" stated that "in the light of all the evidence" and "mindful of the Commission's practice of more than thirty years" the Commission "*is of the opinion*" that the property "should be considered as a whole." The conclusion which the Commission reaches as the result of this "opinion" is that the Commission "will not consider any further evidence" tending to support the Consolidated's position that the property should be valued as a whole.

At the time this statement of policy was made, Rustless had put into evidence all the testimony that it desired tending to support its position that the property should be segregated for the purpose of rate making. The effect of the statement is that all the parties are advised that the Commission feels that the evidence before it is insufficient to justify a change in its preëxisting practice of using a unified rate base, and, therefore, will not require Consolidated to go through the long and, under the circumstances, unnecessary, process of adducing evidence to support a conclusion which the Commission has already reached.

It is assumed by the court that the Commission will not change its decision in regard to this matter without notice to the parties, and that if it should change its decision or be doubtful with respect to the matter, it will modify its statement of policy accordingly, and give an opportunity to Consolidated to present evidence which otherwise would be unnecessary. It is also assumed by the court that were any such change of policy contemplated by the Commission, elementary fairness would require that the Commission allow Consolidated,

as it has allowed Rustless, to bring into the proceedings such evidence as Consolidated might desire to support its contentions.

As the result of the issuance of the memorandum of April 18, 1945, Rustless filed its bill of complaint in this court, on April 30, 1945. The Public Service Commission moved to strike out certain portions of the original bill of complaint as being impertinent, and after a full hearing before this court on June 1, 1945, certain parts of the bill of complaint were stricken out. An amended bill of complaint was thereupon filed immediately, and to the amended bill of complaint the Public Service Commission and Consolidated have demurred. This hearing is upon the demurrer to the amended bill of complaint, and the facts recited herein are taken from the allegations of the amended bill, which, for the purposes of this hearing, are taken as true.

The bill of complaint prays relief under four general provisions of law:

(1) Section 359 of the Public Service Commission Law (Art 23, Code, PGL).

(2) The Declaratory Judgments Act (Acts of 1945, Chap 724, Art 31A, Code PGL).

(3) Section 415 of the Public Service Commission Law (Art 23, Code PGL).

(4) The general equity powers of this court.

At the hearing, it appeared that the more important grounds under which relief was prayed, are § 359 of the Public Service Commission Law and the Declaratory Judgments Act. Relief under § 415, which appears to be subsidiary to the questions arising

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under § 359, and the jurisdiction of the court under its general equity powers, were not pressed as important grounds for relief.

The relief prayed by the complainants is twofold: (1) that the determination or order of the Public Service Commission of April 18, 1945, be declared illegal and set aside; (2) that the effect of the order of April 18, 1945, be judicially declared and the rights and duties of all parties thereunder with regard to the application to the principal of segregation be determined.

Two principal questions are thus presented to the court:

(1) Was the action of the Commission of April 18, 1945, an appealable "order" within the terms of § 359 of the Public Service Commission law; and

(2) If not, may the rights and duties of all parties with respect to the establishment of a unified or a segregated rate base be judicially declared under the Declaratory Judgments Act?

3—Is the Action of the Commission of April 18, 1945, an Appealable Order?

[1] Section 359 of the Public Service Commission Law (Art 23 PGL) provides:

"Any company, corporation, association, person, or partnership subject to any of the provisions of this subtitle, or other person or party in interest, shall have the right to proceed in the courts to vacate, set aside or have modified any order of said Commission on the grounds that such order is unreasonable or unlawful, as

hereinafter more particularly set forth."

By the terms of this section, an appeal is thus authorized from "any order" of the Commission, and both parties rely on the interpretation made by Judge Parke in the case of Potomac Edison Co. v. Public Service Commission (1933) 165 Md 462, 1 PUR (NS) 339, 169 Atl 480, in support of their respective positions. The Potomac Edison Case was decided December 7, 1933, and was an appeal from a final order of valuation made by the Commission in proceedings commenced by an order similar to that in the present case, for an investigation of rates. The Commission, after hearings and receiving evidence on the question of valuation, passed a provisional order on November 29, 1932, PUR1932B 6, determining the fair value of the corporate property for rate-making purposes. The utility corporation filed a protest against the passage of a final order confirming this valuation on the ground it was unreasonable and unlawful. After hearing, the Commission rejected the protest, and determined that the provisional valuation made was the fair value, and on March 1, 1933, passed an order confirming the provisional order. The provisional order was accompanied by an elaborate opinion explaining the reasons for the Commission's tentative valuation. The final order of valuation recites the filing of the tentative valuation, the protest, the consideration by the Commission, and orders that the tentative valuation "be and it is hereby confirmed and made final."

The contention made by the Potomac Edison Company in seeking a review of that order under both §§ 359

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and 415 of the Public Service Commission law, was that it was a final order reviewable on appeal to the court. The Commission contended that it was merely an interlocutory order, and that no order could be regarded as final until, by its terms, some rate was established or some act ordered to be done or omitted, or that the order constituted a completion of the whole proceedings.

The court of appeals, speaking through Judge Parke, held that the order was appealable under § 359. Since both parties rely upon the language used by Judge Parke, it is necessary to set forth in full the five separate statements made by him as to what is an appealable order under § 359.

"It is clear from the context of the section that the order within the meaning of the language used is not an interlocutory or procedural order passed in the course of a matter before the Commission and not determining any right of controversy involving a justiciable question under the enactment, but one decisive of some subject-matter of which the commission has jurisdiction and the power to enforce against any party interested. Such a construction is consistent with the spirit of the law and contributes to its efficient and orderly administration." (165 Md at p. 464, 1 PUR(NS) at p. 340).

" . . . a procedural or interlocutory order incident to the course of the proceedings is not the subject matter of the section under consideration." (165 Md at p. 465, 1 PUR(NS) at p. 341).

"The construction adopted . . . assures a procedure which will afford

an appeal to the courts from any order passed by the Commission that is not of an interlocutory or procedural character." (165 Md at p. 470, 1 PUR(NS) at p. 344.)

"The final order of valuation is, therefore, conclusive to the extent permitted by its nature when its finality is limited to the data with reference to which it was made." (165 Md at p. 471, 1 PUR(NS) at p. 345.)

"The final order of valuation is, therefore, not interlocutory but basic in its nature, and determinative of a subject matter over which the Commission has jurisdiction and the duty and power to enforce against any party interested. So, this order falls within the class of orders with respect to which the right to proceed in the courts to vacate, set aside, or have modified is granted by the statute. While the precise question has not been expressly determined by this tribunal, the conclusion reached is in harmony with the decisions in *West v. Byron*, 153 Md 464, 470, PUR 1927E 286, 138 Atl 404; *Electric Pub. Utilities Co. v. Public Service Commission*, 154 Md 445, 455, PUR 1928C 3, 140 Atl 840; *Miles v. Public Service Commission*, 151 Md 337, PUR 1926D 610, 135 Atl 579; *Benson v. Public Service Commission*, 141 Md 398, PUR 1923B 424, 118 Atl. 852." (165 Md at p. 472, 1 PUR(NS) at p. 345).

On the fundamental question of whether the present memorandum is an "order" or a "final order," the parties urge diametrically opposite interpretations of Judge Parke's words. The Commission contends that even though the memorandum of April 18, 1945, may be an "order," it is mere-

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ly procedural and evidentiary, and furthermore, that it is not final. It is, therefore, the Commission says, positively excluded from appeal by the words of Judge Parke.

Rustless, on the other hand, contends, first, that the memorandum is an "order," in that it is a determination which is, for all practical purposes, final; that it is a valuation order in that it settles one of the two main elements of valuation, namely, the property to be included in the valuation, the other element being the amount at which it is to be valued. As a result, Rustless contends, this order is a basic order, and is as basic and final as the valuation order found to be appealable in the Potomac Edison Case, *supra*.

Rustless further contends that by his opinion in the Potomac Edison Case, Judge Parke overturned the rule forbidding piecemeal appeals, and expressly approved appeals from interlocutory orders provided they are "basic." Conceding that such an interpretation is a reversal of the previous doctrine in Maryland, counsel for Rustless urge that the Potomac Edison decision expressly approved appeals from interlocutory orders on basic matters and adopted as a test of appealability not the question of whether an order was interlocutory or final, but whether it was or was not basic. The way to avoid piecemeal appeals, say they, is for the Commission to refrain from piecemeal decisions. Although the Commission was not bound to make or publish any decision with respect to segregation on April 18, 1945, the Commission having done so, say they, it is now open

for either party to have that decision reviewed.

Each party charges that an acceptance of the position of the other will cause intolerable confusion and delay. On the part of Rustless, it is contended that unless it is able to obtain an immediate decision on this question, months will be spent in fruitless proceedings leading to an unlawful valuation on the unified base, which the Commission has now stated its intention to establish. On behalf of the Commission, it is urged that the allowance of piecemeal appeals will result in delays, not of months, but of years, and that the entire orderly administration of the regulations of public utilities as developed over the past twenty-five years in Maryland and other states, will be thrown into confusion.

The general theory of public utility regulation through a Commission is based upon a procedure whereby the Commission, in the first instance, determines facts and arrives at a conclusion based upon the evidence. The evidence relates to matters of legal right, property valuations, financial considerations, business practices, and public convenience and necessity. In these matters it is presumed to be, and usually is, well informed and expert through its specialized activities in connection with public utilities, and through the aid of its expert staff of engineers and accountants. When the Commission has promulgated any order or established any rate, such order or rate is open to review in the courts on the ground that it is unreasonable or unlawful, but the court itself is not empowered to take the positive action of making a new order (§§ 415, 416). The court can take additional testi-

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mony under § 416, but then can only send the case back to the Commission in order that the Commission may make a revised order, which again may be reviewed for illegality and unreasonableness.

A fundamental principle, which is of long standing and well settled in many decisions, both Federal and state, is that when a proceeding has been instituted before an administrative tribunal, the parties thereto are not entitled to appeal to the courts until the administrative proceedings have been completed and the administrative remedy exhausted.

The matter is well summed up in *Capitol Water Co. v. Public Utilities Commission*, 41 Idaho 19, PUR 1926A 78, 84, 237 Pac 423, as follows:

"The Commission ought not to be compelled to divide a hearing upon valuation because, at some stage of its proceedings, it has excluded testimony or rejected evidence offered of property used and useful as a part of the property of the utility; and, on the other hand, if it should by some ruling include, or indicate its intention to include, the property of the utility, which was contended not to be used and useful for the purpose of valuation, it ought not to be compelled to suspend further valuation, or to stop its deliberations and make findings of fact and an appealable order. The statute does not contemplate findings of fact and a decision and order in such steps, or that every time the Commission rules upon some contested point before it, it is called upon to immediately make findings of fact and an order that is appealable in and of itself."

See also the discussion of *Hughes*,

C.J., in *Federal Power Commission v. Metropolitan Edison Co.* (1938) 304 US 375, 385, 82 L ed 1408, 24 PUR (NS) 394, 58 S Ct 963, and of *Brandeis, J.*, in *Myers v. Bethlehem Shipbuilding Corp.* (1938) 303 US 41, 50, 82 L ed 638, 58 S Ct 459, each referring to: "the long settled rule of judicial administration, that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted."

While counsel for Consolidated concede that the language of Judge Parke as quoted above is open to various interpretations, it seems to this court that it is not open to the construction that it was intended to upset well-settled doctrines. On page 472 of 165 Md, 1 PUR(NS) at p. 345 of the *Potomac Edison Case*, *supra*, several cases decided by the court of appeals were referred to with approval, and Judge Parke stated that the *Potomac Edison* decision is in harmony with those decisions. Certainly, there is no express approval of "piecemeal appeals," and there is also no express disapproval of the long-standing doctrine in law and in equity that no appeal can be taken from a mere expression of opinion. If such a fundamental reversal of the Maryland policy had been intended, the matter would certainly have been discussed in the opinion, but this court finds no indication that such a reversal was intended. Judge Parke's words are rather to the contrary.

Although sometimes expressed conversely rather than directly, the court feels that the decision in the *Potomac Edison Case* lays down a few clear and simple rules with respect to appeals

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from orders of the Public Service Commission, which may be summarized as follows:

(1) no appeal can be taken on a procedural question.

(2) no appeal can be taken on an interlocutory order.

(3) an appeal can be taken from a final order on any basic question.

(4) whether an appeal can be taken from a final order on a question which is not basic is not decided.

Whether an order is interlocutory or final depends upon whether something remains to be done in order to reach a conclusion. In the present case it is obvious that much remains to be done. The testimony is still not completed. The principal thing that remains to be done is for the Commission to formulate and announce a decision resulting from its expression of policy. At the present time, its statement of policy is not, in form or in substance, a final determination of value on any theory. At most, it is a statement of its present view and its intention to find a valuation on the unified theory. Whether it may change its mind or not between now and the passage of the final order, does not seem vital. The important consideration is that the Commission has not yet arrived at a final valuation, nor has it given its reasons for whatever conclusion it may finally adopt. An attempt to review its statement of policy at the present time would be forced to proceed without the benefit of either the data used by the Commission or knowledge of the reasons which persuaded it to adopt whatever conclusion it may finally reach.

All of the reasons supporting the prohibition of appeals against expres-

sions of intention or orders not final, in civil cases, either at law or in equity, seem applicable to the present case. *Boteler & Belt v. State* (1835) 7 G. & J. 109, 113; *Farmers & Merchants Natl. Bank v. Harper* (1927) 153 Md 128, 130, 137 Atl 702; *Purdum v. Lilly* (1944) 182 Md 612, 35 A2d 805, and cases therein cited.

In *Comans v. Tapley* (1911) 101 Miss 203, 57 So 567, the court quoted from *Freeman on Judgments* as follows: "By far the greater number of those (interlocutory judgments, orders or decrees) which are at all likely to be mistaken for final judgments or decrees . . . are those which, while they determine the rights of the parties, either in respect of the whole controversy or some branch of it, merely ascertain and settle something without which the court could not proceed to a final adjudication, and the settlement of which is obviously but preliminary to a final judgment or decree."

It would hardly be contended that a tentative valuation order would be appealable. Yet, in any tentative valuation order the Commission would necessarily have previously made the decision as to whether it would find a valuation upon a segregated or unified base. A fortiori, the present order should not be appealable because interlocutory.

The problem of what is a basic question within the meaning of the words of Judge Parke may, in some cases, be a difficult one. It is clear, however, that the *Potomac Edison Case*, *supra*, decided that an order of valuation is a basic order. The present case concerns valuation and, therefore, a final decision establishing a rate base upon

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either the unified or segregated bases, would be a basic decision.

In argument, counsel for Rustless asserted that the decision of the Commission to omit one of the powerhouses of Consolidated from the valuation would be appealable prior to a final establishment of the rate base. Pressed further, he conceded that a decision to omit one of the generators in the powerhouse would be appealable, prior to a final valuation. Such instances are indicative of the complication which would ensue if appeals were granted on such matters. It is impossible to believe that the court of appeals in the Potomac Edison Case intended to make such a fundamental change in the law.

The Commission contends that the question presented here is merely one of evidence; that all the Commission stated was "We will hear no further evidence on the subject of segregation." Although it seems to the court that the order of the Commission is, as stated therein, a "statement of policy" which affects basic matters, it is not necessary to decide this question since the determination of this court is based upon the view that the memorandum appealed from is not final but interlocutory.

On the question of delay, much can be said to the effect that the proceeding in the present case and in the determination of this one question, would be expedited, but, in general, the court believes that the principle prohibiting piecemeal appeals is far more effective to prevent delay than to promote it. In its opinion, piecemeal appeals would not only increase the delay, but would so confuse the regulation of public utilities that it would be impossible to ob-

tain satisfactory results in view of the innumerable questions which might be raised. The only practical solution to avoid such delays would be for the Commission to sit silent throughout every proceeding and never intimate to any party in any way what its decision might be.

This court concludes, therefore, that the memorandum of April 18, 1945, is not appealable under § 359, because it is interlocutory and not a final order. It lacks the elements of a final order in that (1) it is not final, but interlocutory in form, (2) it is not final in precision, there being no conclusion as to valuation, (3) as a result of it no specific rights are established or determined, (4) no complete statement of reasons is annexed to it in accordance with the Commission's practice with regard to final orders of this character, and (5) its results are not co-ordinated with other elements to be considered by the Commission.

It is, in fact and in effect, an interlocutory expression of opinion, a tentative conclusion, upon which final action will be taken later.

4—*Is the Complainant Entitled to Declaratory Relief?*

[2] The complainant contends that whether or not an appeal under the Public Service Commission Law is authorized, it is entitled to declaratory relief under the uniform Declaratory Judgments Act as reenacted by the legislature in 1945 (Art 31A of the Code). As stated in the preamble to this act, it is designed to overturn certain decisions of the court of appeals which do not express the true legislative intent, and to make clear that the law as declared in those decisions was

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not what the legislature intended. The essence of the act as applying to complainant's contention is contained in § 6, as follows:

"When, however, a statute provides a special form of remedy for a specific type of case, that statutory remedy must be followed; but the mere fact that an actual or threatened controversy is susceptible of relief through a general common law remedy, or an equitable remedy, or an extraordinary legal remedy, whether such remedy is recognized or regulated by statute or not, shall not debar a party from the privilege of obtaining a declaratory judgment."

The Consolidated and the Commission rely specifically upon the prohibition against using the declaratory judgment procedure where a statute provides a special form of remedy for a specific type of case. Rustless relies upon the contention that the mere fact that there is a statutory appeal provided, does not debar the complainant from relief by way of declaratory judgment.

The previous decisions of the court of appeals which it was intended to reverse, are substantially those in which the court held that the declaratory judgment process was merely supplementary and not in substitution for ordinary common law or equity procedure. See *Caroline Street Permanent Bldg. Asso. v. Sohn* (1940) 178 Md 434, 13 A2d 616; *Morgan v. Dietrich* (1941) 179 Md 199, 16 A2d 916.

The most recent case on the act, *Tawes v. Williams* (1941) 179 Md 224, 228, 17 A2d 137, was one in which the court of appeals held that in income tax cases, since a special pro-

cedure for determining tax liability had been set up by statute, that procedure must be followed. Both sides in the present case agree that *Tawes v. Williams* is good law under the 1945 amendment.

The complainant contends that it has in fact followed the statutory procedure, namely, an appeal under § 359. If an appeal is allowable under § 359 there is, of course, no necessity to obtain a declaratory judgment, but if an appeal is not allowable, then by necessity it contends, there is no other statutory procedure available and it is entitled to declaratory relief.

The general principle with respect to declaratory relief in matters subject to administrative decision, is stated by Professor Gellhorn (*Administrative Law*, 1940, p. 793) as follows:

"Only after it is clear that no legislative disposition of the appropriate procedure has been made may one with safety think in such general terms as injunction, habeas corpus, mandamus, etc. For where the statute has indicated the methods by which and the circumstances in which administrative action is to be subjected to the scrutiny of judges, the use of other devices for securing judicial examination is not likely to be permitted by the courts."

It is also to be borne in mind that the basic object of the Declaratory Judgments Act is to provide anticipatory relief prior to the infliction of a wrong. The rate-making procedure in itself has some elements of resemblance to the declaratory process, for it is, in its nature, anticipatory, laying down a rule for the future which must be followed by the parties affected.

Is then the present case within the terms of the Declaratory Judgments

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Act requiring that the statute be followed where there is a special form of remedy for a specific type of case?

It would seem to me to be hard to find a more special form of remedy for a more specific type of case than that provided in § 359 and § 415 of the Public Service Commission law. That a rate case is a special type of case can hardly be controverted. It is conducted before a special body, equipped with a special staff, expert in the effect of special considerations, some legal and some extra-legal, all to be applied in the light of public needs in addition to private rights. The statute provides a specific form of remedy with detailed provisions for service, answer, rehearing, and other matters.

Furthermore, the present case is a case on appeal. The Declaratory Judgments Act makes no pretense to regulate appeals of any sort; it is essentially an instrument for decisions of first instance, and judgments under it are themselves subject to appeal. In the opinion of the court, it was designed to make unnecessary a violation of legal or equitable rights, and to prevent damage by anticipatory process. In the present case the dispute already exists, the proceedings have been started; they have not yet been finished; and when they are finished, a statutory procedure for appeal will be available.

The present case does not, it seems to the court, fall within the proviso that the mere fact that a common law controversy is susceptible to relief through a general common law remedy or equitable remedy or an extraordinary legal remedy, whether such remedy is recognized or regulated by

statute or not, then declaratory relief shall be available. It seems to the court that the proviso refers to such extraordinary remedies in the sense in which prohibition (Ex Parte Southwestern Surety Ins. Co. [1918] 247 US 19, 62 L ed 961, 38 S Ct 430) mandamus (Hummelshime v. Hirsch [1910] 114 Md 39, 46, 79 Atl 38) and injunction (American-Stewart Distillery v. Stewart Distilling Co. [1935] 168 Md 212, 219, 177 Atl 473) are extraordinary and are recognized and regulated in some degree by statute. The remedy under § 359 is of that different type which is precisely described as "a special form of remedy for a specific type of case."

5—Conclusion

The conclusion of the court, there, is as follows:

1. The action of the Public Service Commission of April 18, 1945, whether an order or not, was interlocutory and not final. It is, therefore, not subject to review on appeal under the Public Service Commission law.

2. The complainant is not entitled to relief under the Declaratory Judgments Act, since the Public Service Commission statute provides a special form of remedy for a specific type of case, and that remedy must be followed in the present case.

Since all the considerations relating to the present case have been fully covered in the amended bill of complaint, the brief, and the argument, the court will sign a decree dismissing the amended bill of complaint without leave to amend.

UNITED STATES CIRCUIT COURT OF APPEALS
UNITED STATES CIRCUIT COURT OF APPEALS, THIRD CIRCUIT

Elizabeth C. Lownsbury et al.

v.

Securities and Exchange Commission et al.

No. 9015

— F2d —

September 11, 1945

PETITION by stockholders of holding company, under § 24(a) of Holding Company Act, for review of orders of Securities and Exchange Commission approving recapitalization plan under § 11(e) of the act; petition dismissed and motion for stay of proceedings denied. For decision of Commission, see (1945) 59 PUR(NS) 65, supplemented by findings approving recapitalization plan, as amended, in Release No. 5895 (June 30, 1945) and order denying petitions for rehearing and other relief in Release No. 5942 (July 18, 1945).

Appeal and review, § 9 — Right to review — Interlocutory order approving plan — Holding Company Act.

A petition by stockholders of a holding company for review of an order of the Securities and Exchange Commission approving a plan for recapitalization under § 11 of the Holding Company Act, 15 USCA § 79k, filed in the circuit court of appeals under § 24(a) of the act, 15 USCA § 79x (a), should be dismissed in view of the jurisdiction of the district court to review the plan and all objections to it when its enforcement is sought, where the Commission order provides that it is not to be deemed operative to authorize any of the transactions contemplated until a district court has entered an order enforcing the plan and that the effectiveness of the plan is conditioned upon approval by a vote of corporation shareholders.

(BIGGS, CJ., concurs in separate opinion.)

GOODRICH, CJ.: This case arises upon the motion of the Securities and Exchange Commission to dismiss the petition of certain stockholders of The Commonwealth & Southern Corporation for review of present orders¹ of the Commission, respondents, and to dismiss a motion, also made by

the same petitioners, for a stay of all proceedings, pending review by this court. The controversy centers upon interpretation of two sections of the Public-Utility Holding Company Act of 1935² in relation to court review of the corporation's reorganization plan.

The primary question involved is

¹ Order of June 30, 1945; Order of July 18, 1945.

60 PUR(NS)

² 15 USCA §§ 79 to 79z-6; 49 Stat 803; act of Aug. 26, 1935, Chap 687, §§ 1-33.

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whether this court is the proper forum to test the Commission's orders pursuant to § 24(a)³ of the act, as petitioners allege, or whether the district court is the proper forum pursuant to § 11(e),⁴ as the Commission alleges.

The orders of the Commission are expressly stated not to be deemed operative to authorize any of the transactions contemplated by the plan until a district court has entered an order

enforcing the plan. The orders also condition the effectiveness of the plan upon its approval by vote of the corporation's shareholders, prior to submission to a district court. The orders are then, argues the Commission, interlocutory and general review provisions, in a statute, as to agency orders do not apply to those which are merely interlocutory. *Federal Power Commission v. Metropolitan Edison Co.* (1938) 304 US 375, 82 L ed

³ Section 24(a). "Any person or party aggrieved by an order issued by the Commission under this chapter may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States court of appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission or unless there were reasonable grounds for failure so to do. The findings of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceeding before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the

court affirming, modifying, or setting aside, in whole or in part, any such order of the Commission shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in §§ 346 and 347 of Title 28."

⁴ Section 11(e). "In accordance with such rules and regulations or order as the Commission may deem necessary or appropriate in the public interest or for the protection of investors or consumers, any registered holding company or any subsidiary company of a registered holding company may, at any time after January 1, 1936, submit a plan to the Commission for the divestment of control, securities, or other assets, or for other action by such company or any subsidiary company thereof for the purpose of enabling such company or any subsidiary company thereof to comply with the provisions of subsection (b). If, after notice and opportunity for hearing, the Commission shall find such plan, as submitted or as modified, necessary to effectuate the provisions of subsection (b) and fair and equitable to the persons affected by such plan, the Commission shall make an order approving such plan; and the Commission, at the request of the company, may apply to a court, in accordance with the provisions of subsection (f) of § 79r of this chapter, to enforce and carry out the terms and provisions of such plan. If, upon any such application, the court, after notice and opportunity for hearing, shall approve such plan as fair and equitable and as appropriate to effectuate the provisions of this section, the court as a court of equity may, to such extent as it deems necessary for the purpose of carrying out the terms and provisions of such plan, take exclusive jurisdiction and possession of the company or companies and the assets thereof, wherever located; and the court shall have jurisdiction to appoint a trustee, and the court may constitute and appoint the Commission as sole trustee, to hold or administer, under the direction of the court and in accordance with the plan theretofore approved by the court and the Commission, the assets so possessed."

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1408, 24 PUR(NS) 394, 58 S Ct 963.

The conditional nature of the Commission's order is apparently a method of so framing its mandate as to avoid the seeming inconsistency involved in §§ 11(e) and 24(a) of the statute. If effective, an orderly review following Commission action is provided for, through district court, circuit court of appeals, and possibly Supreme Court, in proceedings in which all parties in interest may be participants. The very question before us as to effectiveness of the device was before the second circuit in a case, which while showing some difference on facts, presented no difference in legal question which we can see. *Okin v. Securities and Exchange Commission* (1944) 57 PUR(NS) 395, 145 F2d 206 (remanded as to a point not relevant to our question [1945] — US —, 89 L ed —, 65 S Ct 1569).

The second circuit took squarely the position the Commission contends for here. In support of its conclusion, the court stressed the significance of the express provision for general review in 11(b) and its omission in 11(e); "the practicalities of the situation"; and "the legislative history of the act, evincing a congressional intent that the relationship of the Securities and Exchange Commission and the district court provided for in § 11 should be 'exactly' the same as that of the Interstate Commerce Commission and the district court in railroad reorganization under § 77 of the Bankruptcy Act, 11 USCA § 205." (57 PUR(NS) at p. 398).

We think this decision is completely in point and that it discusses the problem thoroughly, reaching a result

which we believe to be correct. No object would be served in repeating what has been so adequately discussed in that opinion.

The petition for review of the orders of the Securities and Exchange Commission is dismissed and the motion for stay of proceedings denied.

Biggs, CJ., concurring: The modified plan submitted by the Commonwealth & Southern Corporation under § 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e), has been found by Securities and Exchange Commission to effect compliance by Commonwealth with the requirements of the Commission's order of April 9, 1942, 44 PUR(NS) 217,⁵ entered pursuant to the provisions of § 11(b)(2) of the act, 15 USCA § 79k(b)(2). The Commission has entered its order of June 30, 1945, approving the plan and its later order of July 18, 1945, denying rehearing. These are the orders which the petitioners, common stockholders of Commonwealth, seek to have reviewed by this court pursuant to the provisions of § 24(a) of the act, 15 USCA § 79x(a). The merits of the plan are not before us. We are concerned first with the question of whether this court is the proper forum for the review of the Commission's orders and second, with the question of the petitioners' application for a stay of all other proceedings. If the answer to the first question is in the negative, no stay may be granted.

The Commission takes the position that this court is without jurisdiction to review the decision of the Commission, pointing out that effectuation of

⁵ Page 3, Holding Company Act of 1935, Release No. 5825, 59 PUR(NS) 65.

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Commonwealth's plan is conditioned by the terms of the Commission's order upon approval by a majority of each class of stock affected and by a district court of the United States pursuant to § 11(e) of the act; that since the order is so conditioned the petitioners are not "aggrieved" by it within the purview of § 24(a); that the right of the petitioners to test the question of whether the plan is fair and equitable and appropriate to effectuate the provisions of § 11 must be tried in a district court. The plan has not yet been submitted to a district court and the Commission states that it will not submit the plan unless it is approved by the stockholders.

If the various subsections of § 11 be scrutinized the following appears. Subsection (a) provides that it shall be the duty of the Commission to examine the properties of public utility holding systems subject to the act to the ends of integration and simplification. Subsection (b) provides that the Commission shall compel the integration and simplification of public utility holding company systems by its orders. Subsection (b) also contains express language providing for judicial review of the Commission's order pursuant to § 24. Subsection (b) of § 11 is the policy effecting clause of the statute and deals with integration and simplification, not with the rights of the individual investors as such. The words "fair and equitable" are not used in subsection (b) and the word "plan" does not appear therein

except in connection with the distribution of voting power. This conception was expressed by this court in *Commonwealth & Southern Corp. v. Securities and Exchange Commission* (1943) 48 PUR(NS) 72, 78, 134 F 2d 747, 751.⁶ There may be in fact no definite "plan" in the Commission's mind when it makes orders of divestment. There may be no identification of the single integrated system or additional systems which may be retained. See *United Gas Improv. Co. v. Securities and Exchange Commission* (1943) 52 PUR(NS) 287, 138 F2d 1010, 1016, and *Engineers Pub. Service Co. v. Securities and Exchange Commission* (1943) 78 US App DC 199, 51 PUR(NS) 65, 138 F2d 936.

If the holding company refuses to comply with the Commission's orders in accordance with subsection (c), 15 USCA § 79k(c), the Commission may apply to a court in accordance with § 11(d), 15 USCA § 79k(d) to effect compliance by the means provided by § 18(f), 15 USCA § 79r(f). Subsection (d) also speaks of a plan, providing that when a district court has taken jurisdiction the court may dispose of the assets of the holding company "in accordance with a fair and equitable reorganization plan" approved by the Commission.

The function of subsection (f) is plain. It provides, as has been indicated, that if a plan or reorganization be proposed for a public utility holding company within the terms of the

⁶ As follows: "The orders to be entered by the Commission under § 11(b) are fundamentally directions that the companies involved achieve a stated result in integration of operations, divestment of nonintegrated properties, simplification of corporate structure or distribution of voting power in order to

meet the standards established by the section. While these orders are final and binding determinations of the result to be achieved it seems clear that Congress intended that the Commission might leave open for later consideration the detailed means by which the result directed should be accomplished."

UNITED STATES CIRCUIT COURT OF APPEALS

act, already made subject to the jurisdiction of a district court because of the refusal of the company to comply with an integration or simplification order, the plan must be approved by the court. But it also provides a method for approving a plan when a district court has taken jurisdiction of the holding company under some statute other than the Holding Company Act. Proceedings pursuant to § 77B or Chap 10 of the Bankruptcy Act as amended afford an example. The court in all these cases must determine whether or not the plan of reorganization submitted to it is fair and equitable. If the plan is to be approved the court must determine also that the provisions of the plan will effect the policies embodied in the act. See *Re Midland United Co.* (1944) 58 F Supp 667. In *Gilbert v. Securities and Exchange Commission* (1945) 58 PUR(NS) 385, 146 F2d 513, the circuit court of appeals for the seventh circuit dismissed petitions seeking review by that court pursuant to § 24 (a) of orders of the Commission approving the plan for the reorganization of Midland United Company and Midland Utilities Company after the plan had been approved by the district court of Delaware pursuant to § 174 of the Bankruptcy Act, 11 USCA § 574. The circuit court of appeals

held that the petitioners were not aggrieved because the orders of the Commission approving the plan were only interim orders. Additional ground on which to base the decision can be found in the legislative history of subsection (f),⁷ fortified by the authority of *Chicago & N. W. R. Co. v. United States*⁸ (1943) 52 F Supp 65, affirmed per curiam by the Supreme Court (1943) in 320 US 718, 88 L ed 422, 64 S Ct 369. There is a purposeful dichotomy in subsection (f). It makes no reference to integration of public utility holding systems and does not by its own terms require a plan to be fair and equitable. The duty to determine whether a plan is fair and equitable and to approve a plan only if it be such, is laid upon the district courts by reference to § 11 (d) of the Public Utility Holding Company Act or to some other statute conferring original jurisdiction upon the court in a particular proceeding. It seems apparent, therefore, that an order made by the Commission in aid of a proceeding under subsection (f) is in the nature of an advisory⁹ or preliminary order and would not be reviewable under § 24 (a).

But the important factor in so far as the review machinery of § 11 is concerned is that Congress intended

⁷ Senator Wheeler, during the course of the debate as to the effect of subsection (f), said, "If I am not mistaken about the matter we employ exactly that procedure in railroad reorganizations at the present time." 79 Cong. Rec. 8845, 1935. See Note 2 of the opinion of the circuit court of appeals in *Okin v. Securities and Exchange Commission*, *supra*.

⁸ The facts of the cited case were as follows: A review of an order of the Interstate Commerce Commission approving a plan of reorganization for a railroad company submitted in a 77 proceeding was sought before a 3-judge district court invoked under the

Urgent Deficiencies Act, 28 USCA § 47. Despite the fact that the Urgent Deficiencies Act provides for a review of "any order of the Interstate Commerce Commission," the district court held that the provisions of the Urgent Deficiencies Act did not provide a review where these provisions were not made specifically applicable and the means for the review of the plan supplied by § 77 were available.

⁹ See also the provisions of §§ 172 and 177 of the Bankruptcy Act, 11 USCA §§ 572 and 577.

LOWNSBURY v. SECURITIES AND EXCHANGE COMMISSION

that if the holding company came into a district court of the United States and jurisdiction was acquired by that court because of the failure of the company to obey the integration or simplification orders of the Commission or by virtue of the provisions of some other Federal statute or law,¹⁰ that court should adjudicate all questions relating to integration, simplification, and the fairness and equity of the plan. In other words it was the intention of Congress if jurisdiction was vested in a district court, that that court and not a circuit court, should pass on the plan and determine and execute the course necessary for the integration and simplification of the holding company structure. See the language of subsection (d), ". . . the trustee with the approval of the [district] court shall have power to dispose of any or all of such assets and, subject to such terms and conditions as the court may prescribe, may make such disposition in accordance with a fair and equitable reorganization plan which shall have been approved by the Commission after opportunity for hearing."

To come now to subsection (e). It is clear that Congress intended public utility holding companies to have the opportunity to submit their own plans to effectuate the provisions of subsection (b) of § 11. If the Commission approves the plan submitted by a holding company as adequate to effectuate the provisions of subsection (b) and as "fair and equitable" to the persons affected by it, at the request of the company the Commission may apply to a district court to enforce and carry

out the provisions of the plan. If the court finds the provisions of the plan to be "fair and equitable and . . . appropriate to effectuate the provisions of § 11," the court shall order the plan to be carried out. If the court had not been required to determine whether or not the provisions of the plan were "appropriate to effectuate the provisions of § 11," it is clear that the duty of the district court would lie solely in determining whether or not the plan was fair and equitable to the persons affected by it and the district courts would not be compelled to concern themselves with the questions of policy presented by subsection (b). Since the words "appropriate to effectuate the provisions of § 11" are used they must be given their natural meaning and since integration and simplification are the prime objectives of subsection (b), a district court must pass on all questions of integration and simplification presented as well as on the fairness of the plan.

The provision of subsection (e) that the Commission at the request of the holding company "may apply" to a district court to carry out the plan should be deemed to be of mandatory effect. In other words if the Commission approves the plan submitted by the company and is requested by the company to apply to a district court to enforce and carry out the plan in my opinion the Commission must take the requested action. The approval of the plan by the Commission plus the request that the Commission apply to a district court to enforce it and to carry out its provisions should be deemed to have the effect of "fixing" or "re-

¹⁰ The provision of subsection (f) would, I think, be applicable to the reorganization

plan of a holding company in an equity receivership proceeding in the Federal court.

UNITED STATES CIRCUIT COURT OF APPEALS

serving" jurisdiction in a district court.¹¹ The fact that the effectuation of the plan in the case at bar depends on the approval of the stockholders and of the district court aids this view for the Commission's order is inoperative until the conditions are met.

I can perceive no more reason for holding that a security holder may avail himself of the review provisions of § 24(a) when the company has filed a Commission approved plan under subsection (e) of § 11 than for holding that the security holder is entitled to such a review when a plan approved by the Commission is filed under subsections (d) or (f). It is clear that Congress did not intend that a security holder should have the right to a § 24(a) review of an order of the Commission approving a plan submitted to a district court pursuant to the provisions of subsections (d) or (f).

The method, technique, or device adopted by the Commission in the instant case in conditioning its order as indicated seems proper and well within the procedural field allotted to the Commission by Congress. Certainly the device adopted can do no harm to the rights of a security holder. The interpretation of subsection (e) by the Commission is entitled to great weight since it is the agency charged by Congress with the administration of the Public Utility Holding Company Act. The fact that subsection (b) expressly provides for a § 24(a) review while subsections (d), (e), and (f) do not, is also very persuasive. Cf. our decision in *Marquis (L. J.) & Co. v. Securities and Exchange Commission* (1943) 49 PUR(NS) 415, 134 F2d 822 and the circumstances of the cited case.

For these reasons I concur in the decision of the court.

¹¹ It should be observed that in the instant circumstances, the application may be made to one of two district courts, that of the district of Delaware in which the corporation is domi-

ciled, or that of the southern district of New York where the corporation has its principal office and carries on its business.

TOAN v. PERRY

NEW YORK SUPREME COURT, APPELLATE DIVISION,
FOURTH DEPARTMENT

Lewis A. Toan

v.

Village of Perry

269 App Div 894, 56 NY Supp2d 572
June 27, 1945

APPPLICATION for order directing village to supply water; or-
der dismissing application reversed.

Service, § 126 — Duty of municipal plant to serve — Water.

A municipality operating a water plant must supply water to an applicant when the evidence establishes the sufficiency of the water supply and that the applicant can be supplied without danger or harm to the residents.

(TAYLOR, P.J., and HARRIS, J., dissent.)

Before Taylor, P.J., and Dowling,
Harris, McCurn, and Love, JJ.

APPEARANCES: Wynkoop & Toan,
of Rochester (Thomas L. Toan, of
Rochester, of counsel), for appellant;
Erwin & Erwin, of Geneseo (Austin
W. Erwin, of Geneseo, of counsel),
for respondent.

PER CURIAM: The evidence estab-
lishes the sufficiency of the water sup-
ply and that petitioner can be supplied
without danger or harm to the resi-
dents of the village of Perry. Under
those circumstances the refusal to

serve petitioner was arbitrary. Vil-
lage Law, § 224; *People ex rel. Hilli-
ker v. Pierce* (1909) 64 Misc 627,
119 NY Supp 21. In *Dexter Sul-
phite Pulp & Paper Co. v. Shaver*
(1944) 183 Misc 275, 51 NY Supp
2d 37.

Order reversed on the law and facts
without costs of this appeal to either
party, report of official referee con-
firmed, and order granted for the re-
lief prayed for in the petition, without
costs. All concur, except Taylor, P.J.,
and Harris, J., who dissent and vote
for affirmance.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Re Department of Highways of the
Commonwealth of Pennsylvania

Application Docket No. 62411

Re Butler Township Water Company

D. A. 1

July 24, 1945

PETITION of water company for determination of damages incident to alteration of railroad crossing at grade; denied.

Crossings, § 59 — Alteration cost — Expenses of water company.

A water company is not entitled to damages because of expense incurred in lowering its water line and expense incurred in purchasing water during the time service was interrupted while grade crossing alterations were under way, where no property of the company has been taken, injured, or destroyed by reason of the alteration of the crossing.

By the COMMISSION: Our order issued January 3, 1944, in the proceeding docketed at A. 62411 provides, inter alia, for the alteration of a crossing at grade, at a point in Conyng-ham township, Columbia county, about 0.8 of a mile west of the borough of Ashland, Schuylkill county, where State Highway Legislative Route 19081 crosses two main tracks of the Big Run Branch of Mine Hill and Schuylkill Haven Railroad Company, leased and operated by Reading Company.

The order also provides that any relocation of, changes in, or removal of any adjacent structures, equipment, or other facilities of any public utility other than Reading Company located within the limits of any high-

way, which may be required as incidental to the alteration of the crossing at grade be made by said public utility, at its sole cost and expense, and in such a manner as will not interfere with the construction of the improvement, and that any relocation of, changes in, or removal of any adjacent structures, equipment, or other facilities of any public utility other than Reading Company located beyond the limits of any highway, which may be required as incidental to the alteration of the crossing at grade be made by said public utility in such a manner as will not interfere with the construction of the improvement.

The order further provides that the Department of Highways pay all compensation for damages due to the

RE DEPARTMENT OF HIGHWAYS

owners, exclusive of Reading Company, for property taken, injured, or destroyed by reason of the alteration of the existing crossing in accordance with the order.

By application dated November 10, 1944, filed with this Commission November 16, 1944, and docketed at A. 62411, D. A. 1, Butler Township Water Company seeks the determination of damages due for property taken, injured or destroyed by reason of the alteration of the crossing aforementioned.

A hearing was held on the application and briefs have been filed by the Department of Highways of the Commonwealth of Pennsylvania and Butler Township Water Company.

Testimony submitted by a witness for the water company at the hearing held January 9, 1945, on the application of Butler Township Water Company, shows that the alteration to the southerly highway approach to the crossing required applicant to lower, to a depth varying from 0 to 6 feet, approximately 216 feet of a 10-inch water line located within the limits of the highway right of way and that, in view of the required change within the limits of the highway right of way, it was necessary from an operating standpoint for the water company to lower approximately 144 feet of the water line located beyond the limits of the highway right of way.

The testimony also shows that it was necessary for the water company to purchase 5,460,000 gallons of water to supply certain of its customers during the time alterations were being made to the pipe line.

The expense incurred by the water company in furnishing materials and

performing work in making the required changes in its facilities within the limits of the highway right of way totals \$633.58, for changes beyond the limits of the highway right of way the expense totals \$471.37, and the expense incurred by the water company in the purchase of water during the time service was interrupted amounts to \$864.60. Accordingly, a total of \$1,969.55 was expended by the water company in making alterations to its facilities. The distribution of the cost of the water purchased was prorated in accordance with the length of pipe line distributed within and beyond the right-of-way limits of the highway, \$518.75 being charged to the cost of rebuilding the line within the limits of the highway and \$345.84 being charged to cost of rebuilding the line beyond the limits of the highway.

It is the contention of Butler Township Water Company that, by reason of the provisions of Pars 8 and 13 of our order, dated January 3, 1944, at A. 62411 aforementioned, the Department of Highways of the Commonwealth of Pennsylvania is obligated to reimburse the water company the sum of \$817.21, which sum the water company contends is the expense incurred by it in making alteration to its facilities located beyond the limits of the highway.

The Department of Highways contends that all changes in the grade of the highway at the location of the pipe line were made entirely within the limits of the highway right of way; that the water company was required to lower its pipe line within the limits of the highway right of way by reason of the change in grade of the highway, and that the changes made in the

PENNSYLVANIA PUBLIC UTILITY COMMISSION


pipe line beyond the limits of the right of way were for the betterment of operation of facilities of the water company. It is the further contention of the Department of Highways that property of the water company was not taken, injured, or destroyed by reason of the alteration of the crossing in accordance with the provisions of our order dated January 3, 1944, at A. 62411, and that the department should not be required to pay the water company any of the expenses incurred by the water company in making the alterations to its pipe line.

Undoubtedly, applicant has suffered injury and the dollar amount of the injury is not seriously questioned. However, not all injuries are compensable and within the class of noncompensable injuries are those resulting to an adjoining property owner from a change of highway grade where no property of such owner is actually taken. *Hoffer v. Reading Co.* (1926) 287 Pa 120, 134 Atl 415. Similarly it is settled law that an adjoining property owner acquires no right of action against a railroad company for damage resulting to his property by the elevation of the railroad within the limits of the right of way: *Gillespie v. Buffalo, R. & P. R. Co.* 226 Pa 31, 74 Atl 738.

In the very recent case of *Pennsylvania Co. v. Philadelphia* (1945) 351 Pa 214, 40 A2d 461, the supreme court of Pennsylvania held that no damages were payable under § 411 of the Public Utility Law for a mere change of grade where no land has been taken as such damages were not compensable at common law nor have they been made compensable by an act of the legislature. Where the Commonwealth exercises its right of eminent domain and injures but does not take property, it is not required to compensate for the consequential injury. As the court pointed out, § 411 of the Public Utility Law "does not create a liability for a new tort." This recent case controls the instant matter. None of applicant's property was taken; all the injury was consequential. For such injury, there can be no recovery.

Under the applicable Pennsylvania Law, *Butler Township Water Company* is not entitled to damages since none of its property has been taken for the improvement and the expenses sought to be recovered were occasioned by a change of grade within the existing highway right of way; therefore,

It is *ordered*: That the instant application be and is hereby denied.

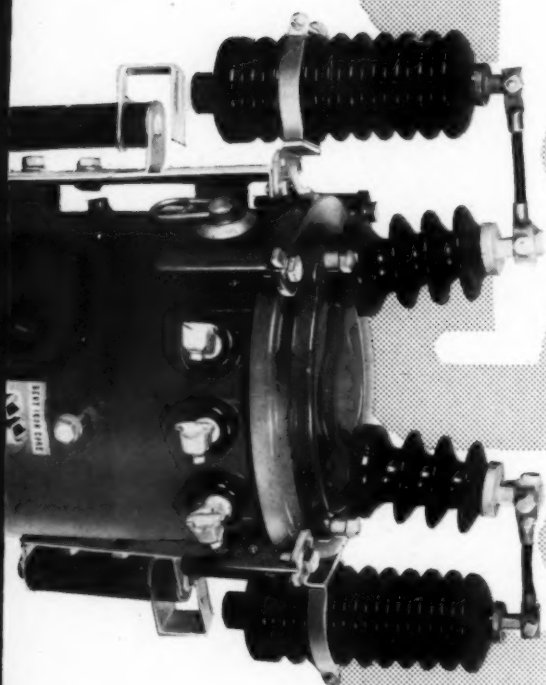


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Industrial Progress

Selected information about products, supplies, and services offered by manufacturers. Also announcements of new literature and changes in personnel.



Davey Compressor Appoints Distributors

APPOINTMENT of the Allied Equipment Corporation, Albany, New York, the Myhra Equipment Company, Fargo, North Dakota, and The North Jersey Equipment Company, Newark, New Jersey, as distributors for the Davey Compressor Company, has been announced by Paul H. Davey, president of the Kent, Ohio, manufacturing company.

Present plans of the Allied Equipment Corporation include a full fleet of compressors for rental to utilities and contractors in the area served.

The Myhra Equipment Company specializes in construction equipment and contractors' items, and is a dealer for Case and for Ford-Ferguson tractors. A branch is maintained at Grand Forks, North Dakota, in order to provide efficient service throughout the state.

The North Jersey Equipment Company is headed by B. Chernin and L. Selzer. Mr. Chernin was with Henry Lohse Company for a number of years, and during that time has become widely known among New Jersey contracting and industrial, and utility groups. The North Jersey Equipment Company has established sales and service facilities to meet the modern needs of builders and contractors on Davey compressors and other equipment.

Combustion Engineering Appointment

ROBERT M. HATFIELD has resigned as deputy vice chairman of the War Production Board to become assistant general sales manager of Combustion Engineering Company.

A mechanical engineering graduate of Purdue University, class of 1932, Mr. Hatfield came with Combustion Engineering Company in 1934 as a student engineer, subsequently serving in the service and erection department, the proposition department, and then as sales engineer in the Cleveland office. In 1942 he went to Washington as chief of the boiler section of the power branch, WPB under J. A. Krug and later became director of the production scheduling division.

ASHVE Announces 52nd Annual Meeting

THE Council of the American Society of Heating and Ventilating Engineers has announced that the 52nd annual meeting of the society will be held January 28-30, 1946, in New York City with headquarters at Hotel Commodore.

President C. E. A. Winslow, New Haven,

has indicated that prior to the regular business and technical sessions there will be meetings of the council, the committee on research, technical advisory committees, and other special committees.

The general chairman of arrangements is R. H. Carpenter of the New York chapter. Important matters that require the attention of society members are revisions to the society's charter, and amendments to the constitution and by-laws. The program committee has selected a variety of subjects for the technical sessions on problems dealing with heating, ventilating, and air conditioning.

Chas. W. Stewart Joins Clark Manufacturing

APPOINTMENT of Charles W. Stewart, prominent in the steam specialty sales field for many years, as vice president in charge of sales, is announced by The Clark Manufacturing Company of Cleveland, Ohio, manufacturers of steam specialties and Clark fluid controls.

Mr. Stewart has served as president of the Steam Heating Equipment Manufacturer's Association since 1942 and has been a member of the American Society of Heating and Ventilating Engineers since 1919.

For the past nineteen years Mr. Stewart has been associated with Hoffman Specialty Company of Indianapolis as zone manager, assistant general sales manager and, more recently, as vice president in charge of sales.

In his connection with The Clark Manufacturing Company, Mr. Stewart will work closely with Vice President John L. Mainwaring in extending the sales and distribution of the company's products nationally.

J. French Robinson Receives Charles A. Munroe Award

THE highest honor bestowed by the American Gas Association was conferred recently on J. French Robinson, president, The East Ohio Gas Company, Cleveland, and former president of the AGA. Mr. Robinson received the Charles A. Munroe award for

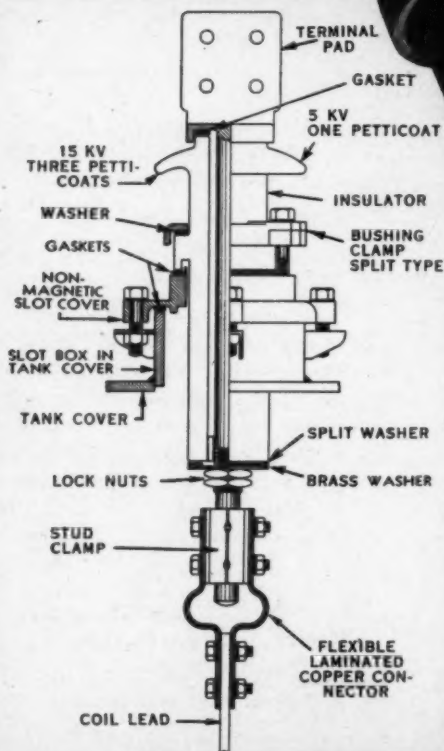
(Continued on page 36)

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On the lower end of the bushing conductor, a laminated connector is attached to the transformer lead. Being flexible, this connector eliminates the transmis-

sion of stresses from the coil lead to the porcelain insulator. The absence of such stresses assures tightness of the joints between the porcelain and metal parts. Heavy alloy bolts are used throughout for electrical and mechanical connections.

Unnecessary losses and heating are eliminated by mounting the bushing in a non-magnetic slot cover. Non-magnetic metal clamps are used for attaching the bushing to the cover. These clamps, being of the split type, permit easy installation or removal of the complete insulator including the hardware.

TRANSFORMER COMPANY

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(Continued from page 33)

having made the most outstanding recent contribution toward the advancement of the gas industry.

The award was made to Mr. Robinson in recognition of his wartime leadership of the gas industry, his personal contributions to its effectiveness in meeting the demands of wartime production, and his work of coordinating the gas industry with wartime fuel activities of the government.

The committee selecting Mr. Robinson for the award which consists of a certificate and monetary award, gave honorable mention to Ernest R. Acker, president, Central Hudson Gas & Electric Corporation, who received the 1943 award, for his continued contributions to the advancement of the gas industry in the instigation and administration of the American Gas Association promotion and research program.

Honorable mention also was given to Alexander M. Beebe, vice president, Rochester Gas & Electric Corporation, for his achievement as chairman of the AGA postwar planning committee in pioneering this project and assembling an efficient organization to complete the reports which received such wide attention.

The Charles A. Munroe award committee consisted of L. E. Knowlton, Providence Gas Company, chairman; C. E. Packman, Middle West Service Company; C. A. Tattersall, Niagara Hudson Power Corporation; J. H. Warden, Oklahoma Natural Gas Company;

THE TENNESSEE VALLEY AUTHORITY has openings for people who are interested in power supply work, and rural, commercial and industrial electrical development activities. The basic entrance salaries for the positions will range from \$2400 to \$4300 a year depending upon the position which candidates may be qualified to fill by reason of their training and experience.

Candidates should be generally qualified through formal education in the field of electrical, mechanical, agricultural, or hydraulic engineering or public utility economics, or a combination of education and experience in one or more of these fields. In addition, for positions at the higher salary levels, candidates should have experience along the lines indicated above. It is desirable that candidates for electrical development work have a technical background, practical electrical utility experience and qualifications for personal contacts with individual customers, officials of local electric systems, and others.

Those who are interested in these positions should write the Personnel Department, Tennessee Valley Authority, Knoxville, Tennessee, requesting an application form.

and H. K. Wrench, Minneapolis Gas Light Company.

Duro Test Corp. Introduces New Fluorescent Lamp

THE Duro Test Corporation of North Bergen, New Jersey, manufacturer of modern lighting products since 1929, has announced that it is in production with Safreen, a new fluorescent lamp that will provide a brighter yet more mellow light, instant illumination, and double lamp life.

In making the announcement, Walter H. Simson, president, said that this vastly improved fluorescent lamp, timed in production to meet the urgent needs of the reconversion period, is being turned out in initial stages only for commercial and industrial users.

According to the announcement, tests in the Duro Test laboratories reveal:

1—That the 40-watt Safreen will produce 20 per cent more light than the standard fluorescent white and 40 per cent more than the standard fluorescent daylight.

2—That the life of this new lamp will run approximately 5,000 hours as against the rated 2,500-hour life of the standard fluorescent lamp.

3—That Safreen used in instant-start circuits, will provide instant illumination without loss of either rated life or efficiency.

Equitable Gas Company Wins Million Man Hour Award

J FRENCH ROBINSON, president, The East J. Ohio Gas Company, Cleveland, Ohio, and former president, American Gas Association presented the Million Man Hour Award of the Association recently to the Equitable Gas Company of Pittsburgh, Pennsylvania, whose production and transportation departments, worked 903 calendar days for a total of 1,029,000 man hours without a disabling injury accident.

This Safety Merit Award is made each year by the executive board of the association on recommendation of the accident prevention committee of the American Gas Association. Mr. Dorrr P. Hartson, vice president of the company, received the award on behalf of the Equitable Gas Company.

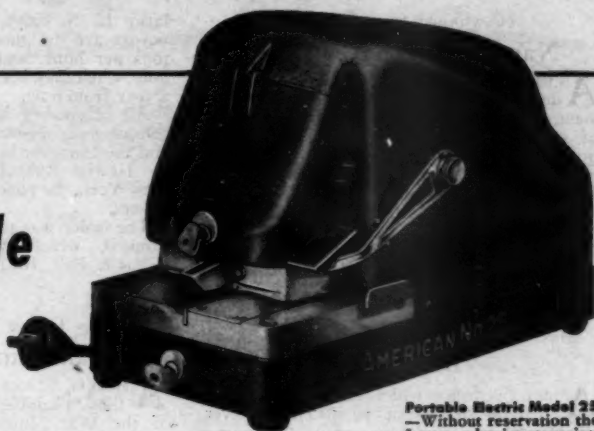
Harry C. Dever Back with Copperweld Steel Company

AFTER a three years' leave of absence, all of which was spent in the armed forces, Harry C. Dever is back with the Glassport, Pennsylvania, division of Copperweld Steel Company. He will be in charge of the Atlanta office and cover the states of Georgia, Florida, South Carolina, and North Carolina.

Prior to his war service, Mr. Dever covered the southeastern part of the United States for Copperweld. Before that, he spent many years as a transmission engineer in the power field.

(Continued on page 38)

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(Continued from page 36)

Named Regional Manager

AS part of their postwar plan for expansion and reorganization of the sales department, H. C. Erhard, vice president in charge of sales, Standard Gas Equipment Corporation, Baltimore, Maryland, announces the appointment of George H. Smith as regional manager of the metropolitan New York, New Jersey, and eastern Pennsylvania territory. Mr. Smith will direct the sales of Oriole and Acorn domestic gas ranges in this area, and also of the Vulcan hotel and restaurant line in the eastern Pennsylvania territory.

Reflector Eliminates "Dark Spot"

ALIGHT reflector which is claimed to eliminate the "dark spot" produced by conventional reflectors, is announced by the General Detroit Corp. and the General Pacific Corp. Called the Diamond Facet Reflector, it is made for use in flashlights, searchlights, lanterns, spotlights, and floodlights of all sizes and types. A special flashlight called "Floodbeam," which incorporates the new reflector, is also being marketed by the two corporations.

Named General Sales Manager of Baldwin Locomotive Works

APPPOINTMENT of Robert G. Allen as general sales manager of The Baldwin Locomotive Works has been announced by Ralph Kelly, president of Baldwin.

Mr. Allen became associated with the Walworth Company in 1925, holding the post of division sales manager from 1929 until 1936. From 1936 to 1940 he served two terms, as representative from the 28th Pennsylvania district, in the Congress of the United States, during which time he occupied a place on the Foreign Affairs Committee.

Mr. Allen was elected president of the Duff-Norton Manufacturing Company in 1940, which position he held until July, 1942, at which time he was granted a leave of absence to serve in the armed forces.

In March, 1945, Mr. Allen joined the Baldwin organization as general manager of Baldwin Southwark division of the company, which position he held until his recent appointment.

Bombed-out Coal Handling System Being Replaced

ROBINS CONVEYORS INC. has just begun production on a coal handling system to replace the one bombed out in Paris, it was announced recently by President Thomas Robins, Jr. Scheduled to be completed in April, the new equipment was designed for the Gennevilliers power station of the Union d'Electricite.

Comparing in size with similar systems in

large U. S. cities, the new Paris coal conveyors are designed to ultimately handle 500 tons per hour, and will handle 150 tons per hour when they begin to operate approximately a year from now.

All machinery is being supplied from the company's main plant in Passaic, New Jersey, and the conveyor belts are being manufactured by Hewitt Rubber Corporation of Buffalo, New York, the parent company of Robins Conveyors.

The order was placed by the French Supply Council, which contacted Robins through Gibbs & Hill, Inc., New York consulting engineers.

Blake Joins Rogers and Slade, Management Consultants

ALFRID G. BLAKE, director of operations for the Training-Within-Industry Service of the War Manpower Commission, Washington, has joined Rogers and Slade, management consultants, New York, as an associate.

Mr. Blake will specialize in company problems involving recruitment of executive personnel, sales activities, and sales training programs.

Long active in the appliance and plumbing equipment fields, Mr. Blake joined the TWI organization early in 1942 to assist industry in meeting its wartime expansion in personnel and upgrading of supervisory employees. As director of operations, he had charge of the coordination of TWI work throughout the nation.

Mr. Blake joined the American Radiator-Standard Sanitary Corporation in 1925, serving in various capacities in Pittsburgh, Youngstown, Washington, Richmond, and Philadelphia. In 1932, he joined the Philadelphia Gas Works Company, and in 1937, was appointed eastern sales manager for the Ruud Manufacturing Company, the post he left to assume his wartime production responsibilities.

Named Industrial Relations Director of White Motor

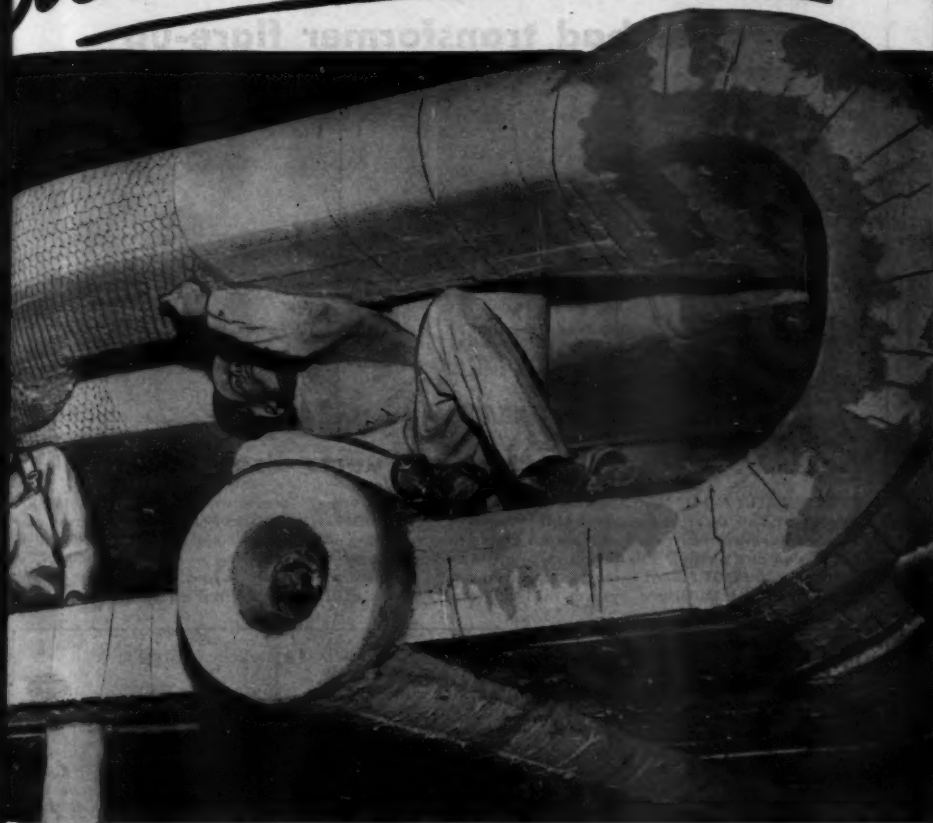
P. C. WILLIAMS, former assistant director of industrial relations at the White Motor Company, has been made director, according to announcement of V. W. Fries, vice president in charge of production.

Kendrick F. Bellows Joins McKinsey & Company

KENDRICK F. BELLOWES, formerly with Consolidated Edison Company, of New York, Inc., has joined McKinsey & Company, management consultants, as a consultant in the firm's New York office.

Since 1937 Mr. Bellows has been Division Engineer in charge of system planning, system engineering department of Consolidated Edison Company where he prepared plans for developing the company's electric, gas and steam systems.

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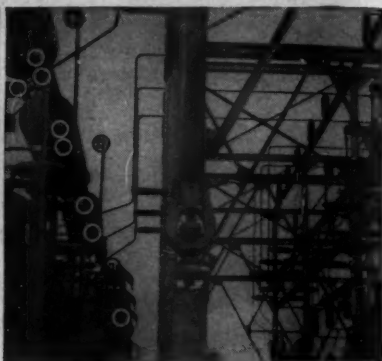


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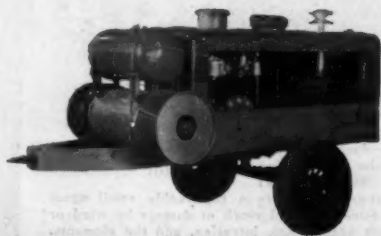


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